

Nos. A19-0665

State of Minnesota

In Court of Appeals

Michelle L. MacDonald, MacDonald Law Firm, LLC,
Appellants,

v.

Michael Brodkorb, individually and doing business as
www.MissinginMinnesota.com, Missing in Minnesota, LLC,
and John and Mary Does,
Respondents.

APPELLANTS' ADDENDUM

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STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Michelle L. MacDonald,
MacDonald Law Firm, LLC,

Case No. 62-CV-18-4145

Plaintiffs,

ORDER

v.

Michael Brodkorb, individually
and doing business as
www.MissinginMinnesota.com,
Missing in Minnesota, LLC,
and John and Mary Does,

Defendants.

On November 1, 2018, the above-entitled matter came before the Honorable Richard H. Kyle, Jr., Judge of District Court, upon Plaintiffs' motion for default judgment and Defendants' motion for summary judgment. Karlowba R. Adams Powell, Esq., appeared on behalf of Plaintiffs Michelle MacDonald ("MacDonald") and the MacDonald Law Firm LLC. MacDonald appeared personally at the hearing. Nathan M. Hansen, Esq., appeared on behalf of Defendants Michael Brodkorb ("Brodkorb"), individually and doing business as www.MissinginMinnesota.com and Missing in Minnesota, LLC. Brodkorb and Allison Mann appeared personally at the hearing.

Based upon the arguments of counsel and all of the records, files, and proceedings herein, the Court makes the following:

ORDER

1. Plaintiffs' Motion for Default Judgment is **DENIED**.
2. Defendants' Motion for Summary Judgment is **GRANTED**.
3. The attached Memorandum is incorporated herein.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: March 1, 2019

BY THE COURT:



Kyle, Richard H. (Judge)
Mar 1 2019 2:29 PM

Richard H. Kyle, Jr.
Ramsey County District Court

MEMORANDUM

Plaintiffs' Amended Complaint for Defamation claims MacDonald's reputation has been damaged by statements made by Defendants. Plaintiffs allege three actionable false statements by Defendants: (1) that MacDonald was a "person of interest" in the disappearance of two children; (2) that an unflattering photograph of MacDonald was published to appear "as if a mugshot;" and (3) that MacDonald was convicted of driving under the influence. Plaintiffs move for default judgment and Defendants seek summary judgment on both counts 1 and 2 of the Amended Complaint. For the reasons set forth herein, the Court denies Plaintiffs' motion for default judgment and grants Defendants' motion for summary judgment.

PROCEDURAL BACKGROUND

On June 14, 2018, Plaintiffs served their original Complaint for Defamation on Defendants. In their Complaint, Plaintiffs alleged that Defendants violated provisions of the Society of Professional Journalists' Code of Ethics by defaming McDonald. Plaintiffs assert claims of Defamation and Defamation Per Se in Count 1, and Defamation by Implication in Count 2. Plaintiffs' filed their Complaint in Ramsey County District Court on June 18, 2018 (the "Ramsey County case").

On June 15, 2018, Plaintiffs filed an identical Complaint for Defamation in Dakota County District Court (File No. 19HA-CV-18-2643) (the "Dakota County case"). On June 18, 2018, Plaintiffs filed a proposed order for a change of venue to Ramsey County District Court. Four days later, on June 22, 2018, Plaintiffs filed a letter notifying the Dakota County District Court that the case had been e-filed and accepted in Dakota County District Court in error. That same day, June 22, 2018, Defendants filed a letter in Dakota County opposing Plaintiff's request to change venue. On July 10, 2018, Plaintiffs filed a notice to dismiss the Dakota County case

pursuant to Minn. R. Civ. P. 41(a). On July 11, 2018, Defendants filed a motion for Rule 11 sanctions against Plaintiffs' attorneys for bringing "frivolous and vexatious lawsuits against Defendants." On August 17, 2018, the District Court dismissed the Dakota County case without prejudice.¹

On July 20, 2018, Defendants moved for Rule 11 Sanctions against MacDonald in the Ramsey County case. In their Motion, Defendants argued that

The Plaintiffs have filed the same lawsuit in two counties in Minnesota. Prior to filing the instant case, the Plaintiffs filed this lawsuit in Dakota County on June 15, 2018 and case number 19HA-CV-18-2643 was assigned. As of the date of this memorandum, that case is pending and the Dakota County Court has issued a scheduling order. [Defendants' counsel] has spoken by telephone with Michelle MacDonald about dismissing this Ramsey County Case and she has declined to do so.

* * *

The Defendants contend that the Complaint in [the Ramsey County] case violates the above provision of Minn. R. Civ. P. 11.02. Specifically, the filing of the same lawsuit in two counties is harassing and creates needless increase in the cost of litigation.

On July 24, 2018, Plaintiffs served an Amended Complaint for Defamation on Defendants in the Ramsey County case. The next day, July 25, 2018, Defendants filed a second motion for Rule 11 sanctions in the Ramsey County case seeking an award of attorneys' fees and "dismissal of all pretended claims with prejudice." A hearing on Defendants' sanctions motion in the Ramsey County case was set for September 10, 2018. On September 6, 2018, Defendants withdrew their Rule 11 sanctions motion in the Ramsey County case.

On September 18, 2018, Plaintiffs moved for default judgment in the Ramsey County case on the basis that "Defendants' have failed to Answer Plaintiffs' Complaints for defamation,

¹ The information concerning the procedural history of the Dakota County case is set forth in the Dakota County District Court's Order for Judgment of Dismissal without Prejudice, filed on August 17, 2018. The undersigned takes judicial notice of this procedural history.

defamation per se and defamation by implication served on June 14, 2018 and July 24, 2018.”

The next day, September 19, 2018, Defendants moved to “dismiss pursuant to Minn. R. Civ. P. 12 and/or Minn. R. Civ. P. 56.”

On November 1, 2018, the Court heard oral argument on Plaintiffs’ motion for default judgment and Defendants’ motion for summary judgment on counts 1 and 2 of the Amended Complaint.² The Court took both motions under advisement.

UNDISPUTED FACTS

Against this undisputed procedural background, which is primarily relevant to Plaintiffs’ motion for default judgment, the Court reviews the record submitted by the parties regarding the events giving rise to Plaintiffs’ defamation claims. Plaintiffs’ Amended Complaint alleges numerous statements attributed to Defendants as having possible defamatory meaning. Plaintiffs’ allegations fall into three factual scenarios which the Court must analyze for defamatory content: (1) that MacDonald was convicted of driving under the influence (DUI); (2) that MacDonald was a “person of interest” in the disappearance of two children in a custody battle involving one of MacDonald’s clients (the mother of the children); (3) that an unflattering photograph of MacDonald was published on Defendants’ website and in tweets to appear “as if a mugshot.” For purposes of Defendants’ summary judgment motion, the undisputed material facts regarding the three primary subjects demonstrate that this matter is wholly appropriate for summary judgment.

² Although Defendants’ Notice of Motion sought to dismiss pursuant to “Rule 12 and/or Rule 56,” Defendants’ pleadings make clear that Defendants seek summary judgment on both Counts 1 and 2 of the Amended Complaint. Defendants’ counsel confirmed this fact at the motions hearing on November 1, 2018.

A. DUI Conviction

Plaintiffs allege that Brodkorb falsely reported in a February 16, 2016 tweet that MacDonald had “a DUI conviction, and that it was upheld by the Court of Appeals.” (Amended Complaint “Amend. Comp.” at 58; MacDonald Affidavit “Aff.” at 52)³ Brodkorb denies ever stating that MacDonald was convicted of a DUI. (Brodkorb Aff. at 13).

The record contains evidence that on May 2, 2013, the Hastings City Attorney charged MacDonald with Third Degree Test Refusal, a gross misdemeanor, Fourth Degree Operating a Motor Vehicle under the Influence of Alcohol, a misdemeanor, Obstructing Legal Process or Arrest, a misdemeanor, Failure to Produce Proof of Insurance, a misdemeanor, and Speeding, a petty misdemeanor. MacDonald plead not guilty to each count and the case proceeded to jury trial in Dakota County in September 2014.⁴ On September 17, 2014, the Dakota County jury found MacDonald guilty of test refusal and obstructing legal process but not guilty of driving under the influence. MacDonald appealed the convictions. The Minnesota Court of Appeals affirmed the convictions in an Opinion filed on February 16, 2016. *State v. Michelle MacDonald Shimota*, 875 N.W.2d 363 (Minn. Ct. App. 2016), *review denied* (April 27, 2016).

The record also contains evidence that on May 18, 2016, an article appeared Defendants’ website, “MissinginMinnesota.com,” entitled, “Michelle MacDonald recommended for GOP endorsement for MN Supreme Court – again.” The article contains two statements concerning MacDonald’s criminal charges in Dakota County:

After MacDonald was endorsed [in 2014], news broke that she was facing criminal charges for suspicion of drunk driving and resisting arrest.

* * *

³ Plaintiffs’ Amended Complaint and MacDonald’s Affidavit are virtually identical documents. As such, the Court will quote both pleadings throughout this Order.

⁴ Before trial, the Court dismissed the charge of Failure to Produce Proof of Insurance in an Order dated September 26, 2013.

In September 2014, MacDonald was found not guilty of drunk driving, but was found guilty of refusing to submit to breath testing, obstructing the legal process and speeding.

(Brodkorb Aff. at 13, Ex E).

B. A “Person of Interest”

Plaintiffs next allege that Defendants identified MacDonald as a “person of interest” on October 22, 2015 and August 3, 2016, in the investigation of the disappearance of two missing girls in a child custody case venued in Dakota County. (Amend. Comp. at 56, 61; MacDonald Aff. at 51, 55). MacDonald represented the mother of the missing children in that custody case. Brodkorb does not dispute that he identified MacDonald as a “person of interest” in text messages and on social media on those dates. Rather, he claims to have made a truthful report about MacDonald’s status after a reasoned examination of the facts. (Brodkorb Aff. at 4-9).

1. October 22, 2015

On October 22, 2015, MacDonald claims to have sent a text to Brodkorb that contained a photograph of herself with Governor Mark Dayton at the signing of a family law bill that MacDonald says was the result of a “custody-parenting time dialogue group” that she was actively involved in. According to MacDonald,

Rather than acknowledging my accomplishment and the dialogue group as news, Brodkorb reacted by replying via text: “[Representative] *Peggy Scott* was not aware you were a ‘person of interest’ in a case involving missing kids.” Apparently, Brodkorb contacted and told several others this false report in person, as he also texted “Many I spoke with today did not feel it was appropriate for you to attend, as police do wish to question you about your involvement with the disappearance of two missing girls.”

(Amend. Comp. at 57; MacDonald Aff. at 51) (emphasis in original). Brodkorb admits to making the above statements on October 22, 2015, which he says refer to the 2013 disappearance of the daughters of MacDonald's client, Sandra Grazzini-Rucki. (Brodkorb Aff. at 4).

2. August 3, 2016

The record contains evidence that on August 3, 2016, Defendants' website, www.MissinginMinnesota.com, posted an article entitled, "Attorney: Sandra Grazzini-Rucki used donated 'food stamp cards' for \$50K bail." (Brodkorb Aff., Ex. B). The article reported that "Sandra Grazzini-Rucki was able to post her \$50,000 bail within hours of being convicted of six felonies for deprivation of parental rights [related to the disappearance of her two daughters], by using donated 'food stamp cards' according to her attorney, Michelle MacDonald." Near the end of the article, it notes that "MacDonald currently serves as Grazzini-Rucki's family court attorney" having been replaced as Grazzini-Rucki's criminal defense attorney "on November 18, 2015---the same day the girls were found living on a ranch in northern Minnesota by law enforcement, headed by the Lakeville Police Department." The article concludes:

MacDonald was labeled in April 2015 as a "person of interest" by the Lakeville Police Department in the disappearance of [the two girls]. MacDonald refused to cooperate with the Lakeville Police Department's investigation into her possible involvement in the disappearance of the sisters----even after public statements from her that she would cooperate in the investigation. Her criminal defense attorney, Stephen Grigsby, said in 2015 that he would advise MacDonald to not speak with the Lakeville Police Department. (emphasis in original)

Id. MacDonald disputes this account. In her Amended Complaint and sworn affidavit, she claims to have "also contacted the Lakeville police who confirmed she was not a person of interest, or suspect, that they do not use those terms, and that her complaint was with Brodkorb, and there was no investigation of her." (Amend. Comp. at 66; MacDonald Aff. at 60).

C. Use of Photograph “As if a Mugshot”

Plaintiffs allege that Defendants posted and tweeted an unflattering photograph of her on multiple occasions, including January 5, 2017 and June 5, 2018, “as if a mugshot.” (Amend. Comp. at 9 & 76-77; MacDonald Aff. at 9, 70-71). Brodkorb admits to posting the photograph of MacDonald and contends the photograph is a public booking photograph of MacDonald that he obtained from the Dakota County Sheriff’s Department. (Brodkorb Aff. at 11-12).

1. January 5, 2017

The record contains evidence that on January 5, 2017, Brodkorb posted and tweeted a photograph of MacDonald, stating “BREAKING: MN Supreme Court referee recommends 60-day susp., 2-yr prob, mental health evaluation for Michelle MacDonald.” (Amend. Comp. at 76-77, Ex 7.2; MacDonald Aff. at 70-71).⁵ There are no references in the tweet that the photograph is a mug shot or booking photograph of MacDonald.

2. June 5, 2018

The record also contains evidence that on June 5, 2018, missinginminnesota posted and tweeted the same unflattering photograph of MacDonald from the earlier January 5, 2017 tweet, alongside her Supreme Court candidacy headshot, stating: “Déjà vu: Michelle MacDonald running again for Minnesota Supreme Court. Michelle MacDonald, who was labeled a ‘person of interest’ in the disappearance of missing children, filed to run again for the Minnesota Supreme Court.” (Amend. Comp. at 9, Ex. 2.1-2.3; MacDonald Aff. at 9).⁶ Like the January 5, 2018 tweet, there are no references in the tweet that the photograph is a mug shot or booking photograph of MacDonald.

⁵ Exhibit 7.2 is filed under seal.

⁶ Exhibits 2.1-2.3 are filed under seal.

LEGAL ANALYSIS

I. PLAINTIFFS ARE NOT ENTITLED TO A DEFAULT JUDGMENT AGAINST DEFENDANTS.

Plaintiffs move for default judgment pursuant to Minn. R. Civ. P. 55.01 on the grounds that Defendants failed to answer or otherwise defend within the time allowed under the rules. Plaintiffs' filed their original Complaint on June 18, 2018, and an Amended Complaint on July 24, 2018. Defendants concede they have not filed formal written answers to either Complaint, but argue that Defendants "otherwise defended" this lawsuit by filing a motion for Rule 11 sanctions in response to Plaintiffs' original Complaint.⁷

A. Legal Standard

"When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend within the time allowed therefor by these rules or by statute, and that fact is made to appear by affidavit, judgment by default shall be entered against that party. . . ." Minn. R. Civ. P. 55.01.

The term "otherwise defend" has not been explicitly defined by the Courts of this State. However, the Court of Appeals, in *Black v. Rimmer*, 700 N.W.2d 521, 525-26 (Minn. App. 2005) cited the federal judiciary's interpretation of the term as it appears in Rule 55(a) of the Federal Rules of Civil Procedure. It noted that "otherwise defend" as defined by the Fifth Circuit Court of Appeals, refers to "attacks on the service, or motions to dismiss, or for better particulars, and the like, which may prevent default without presently pleading to the merits." *Id.* at 526 (quoting *Bass v. Houglund*, 172 F.2d 205, 210 (5th Cir. 1949)). In *Black*, the pro se defendant did not file

⁷ Defendants did not file a responsive pleading to Plaintiffs' motion for default judgment. Therefore, the Court relies on the argument made by defense counsel at the motions hearing.

an answer and did not make a motion to dismiss or other defensive motion, but “appeared for his deposition” and “answered all of the questions put to him.” The Court held that such “cooperation” does not satisfy the requirements of “otherwise defend” as contemplated by Minn. R. Civ. P. 55.01. *Id.*

B. Defendants “Otherwise Defended” This Lawsuit by Filing a Motion for Sanctions in Response to Plaintiffs’ Complaint.

While Defendants’ motion for Rule 11 sanctions was not an attack on the pleadings as contemplated by the Court in *Bass*, it nonetheless constituted a formal act by Defendants to position themselves in opposition to the Plaintiffs’ Complaint. Specifically, Defendants’ sanctions motion was based on the argument that Plaintiffs’ filing the identical lawsuit in two counties---first in Dakota County and then in Ramsey County---constituted harassment and created a needless increase in the cost of litigation warranting sanctions under Rule 11.02. In this sense, the Defendants’ motion for Rule 11 sanctions was more similar to actions listed in *Bass* than the “cooperation” at issue in *Black* and, therefore, appears to meet the definition of “otherwise defend.”

C. Defendants Can Show A Reasonable Defense On The Merits, Due Diligence and Plaintiffs Suffered No Prejudice.

Plaintiffs are not entitled to entry of default judgment even if Defendants’ motion for Rule 11 sanctions was not a timely defense. As the Supreme Court of Minnesota has noted, “denial of a motion for a default judgment is proper when four requirements are met: defendant has a reasonable defense on the merits; defendant has a reasonable excuse for his failure to answer; defendant acted with due diligence after notice of the entry of judgment; and no substantial prejudice will result to other parties.” *Cotter v. Guardian Angels Roman Catholic Church of Chaska*, 294 N.W.2d 712, 715 (Minn. 1980). All four factors must be met for a non-

answering party to prevent default. But a “strong showing on the other factors may offset relative weakness on one factor.” *Imperial Premium Fju, Inc. v. GK Cab Co.*, 603 N.W.2d 853, 857 (Minn. App. 2000).

“Generally, a reasonable defense on the merits requires more than a general denial or an unverified answer.” *Wiethoff v. Williams*, 412 N.W.2d 533, 536 (Minn. App. 1987). Here, Defendants have presented more than a general denial or unverified statements. As set forth more fully in Section II below, the Court finds that Defendants are entitled to summary judgment on both Counts 1 and 2 of Plaintiffs’ defamation action.

Defendants also filed their motion for sanctions only eleven days after their time to answer the original complaint had expired. The record evidences multiple court filings in both the Dakota County and Ramsey County cases in June and July 2018. Plaintiffs filed their Complaint in the Dakota County case in error prompting an immediate motion for sanctions from Defendants. Plaintiffs’ filing of an identical Complaint in Ramsey County was similarly met with a sanctions motion by Defendants. Without ruling on the merits of Defendants’ motion, the Court finds that Defendants acted with diligence in filing their sanctions motion in the Ramsey County case, thereby alerting Plaintiffs of their intent to contest the defamation claims. Defendants then appropriately withdrew their sanctions motion after the District Court granted Plaintiffs’ Rule 41 dismissal of the Dakota County case.

There has been no prejudice to Plaintiffs due to Defendants’ failure to formally answer the Complaint and Amended Complaint. To the extent that Plaintiffs considered Defendants in default, Plaintiffs took no steps to obtain a default judgment for over three months. In fact, Plaintiffs took no steps until after Defendants filed – and withdrew – their second sanctions

motion with this Court. Further, nothing about the prosecution of this matter has been delayed to prejudice Plaintiffs. Accordingly, Defendants can make a strong showing on this factor.

When asked at oral argument on November 1 why Defendants did not also file an Answer to Plaintiffs' Complaint (along with their sanctions motion), counsel represented to the Court that he felt it more appropriate to wait until proper venue was established in either Dakota or Ramsey County. This Court accepts counsel's representation for purposes of the present default motion. At worst, pursuant to *Wiethoff*, this is a weak showing on this factor. *See* 412 N.W.2d at 536 (finding a complete failure to provide a reasonable excuse was a weak showing on that factor).

Because Defendants can make a strong showing on three of four factors, and a weak showing on the fourth, relief is warranted. *See Valley View v. Schutte*, 399 N.W.2d 182, 185-86 (Minn. Ct. App. 1987) (granting relief from default and finding "the strong showing on these three factors must be balanced against the relatively weak showing on the fourth [reasonable excuse] factor. This court has twice reversed a trial court's denial of a motion to vacate a default judgment where the defaulting party's weak excuse for failing to answer the lawsuit was outweighed by a strong showing on the three remaining factors." (citations omitted)).

In short, while Defendants failed to present a reasonable excuse for not interposing an answer in a timely fashion, Defendants' due diligence, the lack of any prejudice to Plaintiffs as well as the merits of Defendants' defense weigh against granting Plaintiffs' motion for default judgment.

II. DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT ON PLAINTIFFS' DEFAMATION AND DEFAMATION PER SE CLAIM (COUNT 1).

A. Legal Standard

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.03. "A fact is material if its resolution will affect the outcome of a case." *O'Malley v. Ulland Bros.*, 549 N.W.2d 889, 892 (Minn. 1996). "[S]ummary judgment is inappropriate where reasonable persons might draw different conclusions from the evidence presented." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997) (citing *Illinois Farmers Ins. Co. v. Tapemark Co.*, 273 N.W.2d 630, 634 (Minn. 1978)). "Thus, the moving party has the burden of showing an absence of factual issues, and the nonmoving party has the benefit of that view of the evidence most favorable to him." *Montemayor v. Sebright Prod., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017) (internal quotations omitted) (citing *Lowry Hill Props., Inc. v. Ashbach Constr. Co.*, 291 Minn. 429, 194 N.W.2d 767, 769 (1971)).

"All doubts and factual inferences must be resolved against the moving party." *Id.* However, "there is no genuine issue of material fact for trial when the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions." *DLH, Inc.*, 566 N.W.2d at 71. "The nonmoving party must present specific facts which give rise to a genuine issue of material fact for trial." *W.J.L. v. Bugge*, 573 N.W.2d 677, 680 (Minn. 1998). "[T]he function of the court on a

motion for summary judgment is not to resolve issues of fact but to determine whether they exist.” *Albright v. Henry*, 285 Minn. 452, 464, 174 N.W.2d 106, 113 (1970).

B. The Requirement of Actual Malice In Public Figure Defamation Claims

To prevail on a defamation claim a plaintiff must prove (1) the defamatory statement was communicated to someone other than the plaintiff; (2) the statement is false; (3) the statement tends to harm the plaintiff’s reputation and to lower the plaintiff in the estimation of the community; and (4) the recipient of the false statement reasonably understands it to refer to a specific individual. *McKee v. Laurion*, 825 N.W.2d 725, 729-30 (Minn. 2013).

In public figure defamation cases, the test on summary judgment “is whether the evidence in the record could support a reasonable jury finding that the plaintiff has shown actual malice by clear and convincing evidence.” *Foley v. WCCO Television, Inc.*, 449 N.W.2d 497, 503 (Minn. App. 1989), *review denied* (Minn. Feb. 9, 1990). “Actual malice requires proof that the statement was made with knowledge that it was false or with reckless disregard of whether it was false or not.” *Id.* (citing *New York Times Co. v. Sullivan*, 84 S.Ct. 710, 725-26 (1964)).

Actual malice is a subjective standard. *In re Charges of Unprofessional Conduct Involving File No. 17139*, 720 N.W.2d 807, 813 (Minn. 2006) (citing *Harte –Hanks Commc’ns, Inc. v. Connaughton*, 491 U.S. 657, 688, 109 S.Ct. 2678 (1989)). Although it may be proved through circumstantial evidence, *see Harte –Hanks*, 491 U.S. at 668, 106 S.Ct. at 2686, actual “[m]alice is not to be presumed or inferred from the fact that a false statement has been made, but must be proved by plaintiff with convincing clarity,” *Valento v. Ulrich*, 402 N.W.2d 809, 813 (Minn. App. 1987). “A genuine issue of fact as to actual malice exists only if the facts permit the conclusion that the defendant[] in fact entertained serious doubts as to the truth of the

publication.” *Jadwin v. Minneapolis Star and Tribune Co.*, 367 N.W2d 476, 488 (Minn. 1985) (quotation omitted).

C. MacDonald is a Public Figure Subject to the Heightened Actual Malice Clear-And-Convincing Standard.

“[O]ne who volunteers [herself] as a candidate for public office becomes a public figure and is subjected to greater scrutiny as [she] aspires for positions of higher responsibility.” *Klaus v. Minn. State Ethics Comm’n*, 309 Minn. 430, 244 N.W.2d 672, 676 (Minn. 1976). In *Monitor Patriot Co. v. Roy*, 91 S.Ct. 621, 625 (1971), the United States Supreme Court explained: “[I]t is abundantly clear that . . . publications concerning candidates must be accorded at least as much protection under the First and Fourteenth Amendments as those concerning occupants of public office.” See also *Jadwin*, 367 N.W2d at 482.

Here, MacDonald has been a perennial candidate for statewide office, challenging incumbent justices for a seat on the Minnesota Supreme Court in 2014, 2016 and again in 2018. For purposes of this defamation lawsuit, the Court concludes that McDonald is a public figure. Therefore, the Court must consider the alleged defamatory statements in light of what is legally required to state an actionable claim for defamation of a public figure: actual malice under the heightened clear-and-convincing standard.

D. There Are No Genuine Issues of Material Fact Precluding Judgment For Defendants On The Basis of Truth or The Absence of Actual Malice.

Plaintiffs’ amended complaint alleges three defamatory statements by Defendants: (1) that MacDonald was convicted of driving under the influence; (2) that MacDonald was a “person of interest” in the disappearance of two girls; and (3) that a photograph of MacDonald was published to appear “as if a mugshot.” The Court finds that summary judgment is proper because

the claimed defamatory statements are either factually accurate or there is an absence of any issues of material facts relating to actual malice.

1. Driving Under the Influence

Truth is a complete defense, and true statements, however disparaging, are not actionable. *Stuempges v. Parke, Davis & Co.*, 297 N.W.2d 252, 255 (Minn. 1980). Whether a statement is one of opinion, which is absolutely protected by the First Amendment, or one of fact, is a question of law for the trial court. *Foley*, 449 N.W.2d at 501 (citing *Janklow v. Newsweek, Inc.*, 788 F.2d 1300, 1305 n.7 (8th Cir. 1986) (en banc), *cert. denied* 107 S.Ct. 272 (1986)).

MacDonald alleges in her Amended Complaint that “on February 16, 2016, Defendants falsely reported in a tweet that Ms. MacDonald had a DUI conviction, and that it was upheld by the Court of Appeals. In fact, Ms. MacDonald had been acquitted of DUI.” (Amend. Comp. at 58) The record, however, is devoid of any evidence of Brodkorb’s purported tweet from February 16, 2016. MacDonald’s Affidavit submitted in support of Plaintiffs’ Motion for Default Judgment makes the same allegation (MacDonald Aff. at 52), but again without supplying the Court with a copy of the offending tweet.

Brodkorb denies every stating that MacDonald was convicted of DUI. In his supporting Affidavit, he submits a copy of a May 18, 2016 article published at missinginminnesota.com concerning MacDonald’s efforts to be endorsed as the Republican Party candidate for the Minnesota Supreme Court. (Brodkorb Aff., Ex. E). The article included these statements about MacDonald’s criminal case:

After MacDonald was endorsed [in 2014], news broke out that she was facing criminal charges for suspicion of drunk driving and resisting arrest.

* * *

In September 2014, MacDonald was found not guilty of drunk driving, but was found guilty of refusing to submit to breath testing, obstructing legal process and speeding. *Id.*

This reporting is consistent with the public case filings of MacDonald's jury trial in Dakota County, which are found in the Minnesota State Court Information System (MNCIS) records.⁸ According to MNCIS, a Dakota County jury acquitted MacDonald of Fourth Degree Operating a Motor Vehicle under the Influence of Alcohol, but convicted her of Refusal to Submit to Breath Testing, Obstructing Legal Process and Speeding. The term "drunk driving" is arguably a synonymous term for the formal criminal charge of operating a motor vehicle under the influence of alcohol (or DUI). The Court concludes that Defendants' May 18, 2016 article accurately describes the disposition of MacDonald's criminal case in Dakota County. As such, there is no genuine issue of material fact regarding the truth of Brodkorb's statements regarding this defamation claim.

2. A "Person of Interest"

A "person of interest" is a "person who is believed to be possibly involved in a crime but has not been charged or arrested." Merriam-Webster.com.2019.<https://www.merriam-webster.com> (27 February 2019).

MacDonald alleges that Defendants identified her as a "person of interest" on October 22, 2015, and again on August 3, 2016, in the investigation of the disappearance of the two missing girls. In his sworn Affidavit, Brodkorb readily admits that he did identify MacDonald as a "person of interest." He claims to have done so based, in part, upon earlier reports published by the Star Tribune. (Brodkorb Aff. at 4). He notes that MacDonald had been identified as a "person of interest" in an April 2015 article by Brandon Stahl, published in the Star Tribune. He

⁸ The Court reviewed the MNCIS Record for Case No. 19HA-CR-13-1371 and takes judicial notice of the outcome of the Dakota County prosecution after receiving permission from the parties.

claims the phrase was repeated in subsequent articles by Star Tribune reporters Stahl and Karen Zamora (July 29, 2016). (Brodkorb Aff. at 4). MacDonald does not dispute that the Star Tribune reporter, Brandon Stahl, published a story (on April 29, 2015) in which a Lakeville police detective identified MacDonald as a “person of interest” in the case of the missing girls. (Amend. Comp. at 65; MacDonald Aff. at 59). MacDonald claims that after reading the article she told Stahl that the claim was false and the Star Tribune subsequently “ceased perpetuating or publishing” references to her being a “person of interest.” *Id.*

In his Affidavit, Brodkorb also asserts that Lakeville Police investigators “confirmed to me, on multiple occasions, that [MacDonald] was a ‘person of interest’ in the investigation, based on their belief that she was involved and that she knew what was going on.” (Brodkorb Aff. at 7). MacDonald claims that she too spoke to Lakeville police who “confirmed that she was not a person of interest.” (Amend. Comp. at 66; MacDonald Aff. at 60). As such, the Court is presented with competing Affidavits and must assess the admissibility of the statements and claims contained in those Affidavits.

On summary judgment, “[s]upporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.” Minn. R. Civ. P. 56.05. Facts set forth in an affidavit that constitute hearsay or otherwise remain subject to the exclusionary rules of evidence do not meet the requirements of Rule 56.05. *American Security Co. v. Hamilton Glass Co.*, 254 F.2d 889 (7th Cir. 1958); *Zenith Radio Corp. v. Matsushita Elec. Indus. Co., Ltd.*, 505 F.Supp. 1125 (E.D. Pa. 1980).

Hearsay is an out-of-court statement offered as evidence to prove the truth of the matter asserted. Minn. R. Evid. 801(c). The rules of evidence bar admission of hearsay unless it fits

under a recognized exception. *See* Minn. R. Evid. 802 (barring admission of hearsay), 803 (listing exceptions to the hearsay rule), and 804 (same). But testimony that is offered to show something other than the truth of the matter asserted is not hearsay. *State v. Moua*, 678 N.W.2d 29, 37 (Minn. 2004).

Here, Brodkorb's statement concerning what he learned from the Lakeville police about whether MacDonald was a "person of interest" is arguably admissible under this exception to the hearsay rule. The statement is not offered by Brodkorb to prove the truth of the matter; rather it is offered to establish his state of mind when he claimed that MacDonald was a "person of interest." The statement also goes to the issue of malice and recklessness. In addition to relying on stories from the Star Tribune, Brodkorb attempted to corroborate those stories by speaking to the Lakeville police.

By contrast, MacDonald's statement concerning what she learned from the Lakeville police is inadmissible hearsay. It is offered for the truth of the matter; to establish that she was not considered a "person of interest" by the law enforcement agency investigating the case. Moreover, there is no evidence that MacDonald spoke to the same law enforcement person(s) as Brodkorb, making a credibility assessment of the parties impossible.

Whether MacDonald was, in fact, a "person of interest" cannot be determined based on the record before the Court. The Court, however, concludes that Brodkorb reasonably believed MacDonald was a "person of interest" based on his review of published news accounts in the Star Tribune and his contact with the Lakeville police. The record is devoid of evidence that Defendants broadcasted their statements that MacDonald was a "person of interest" knowing that the information was false or that Defendants entertained serious doubts as to the truth of their

statements. Therefore, the Court concludes that summary judgment is proper on this alleged defamatory claim in the absence of any issues of material facts relating to actual malice.

3. Use of Photograph “As if a Mugshot”

A mugshot is a “photograph of a person’s face taken after the person has been arrested and booked.” *Mug Shot*, Black’s Law Dictionary (7th ed. 1999). A typical mug shot is two-part, with one side-view photograph, and one front-view.

Plaintiffs allege that on June 5, 2018, Defendants posted and tweeted a photograph of MacDonald, “as if a mugshot,” alongside her Supreme Court candidacy headshot, stating: “Déjà vu: Michelle MacDonald running again for Minnesota Supreme Court. Michelle MacDonald, who was labeled a ‘person of interest’ in the disappearance of missing children, filed to run again for the Minnesota Supreme Court.” MacDonald also alleges that this same “image first appeared in a tweet by Defendants on or about January 5, 2017 where [Brodkorb] highlighted a ‘mental health eval for Michelle MacDonald’.”⁹ MacDonald asserts that the image is “not a mugshot.” In her Affidavit, she claims the image is a screen shot from a family court hearing taken from a security video at the Dakota County Courthouse that she shared with Brodkorb back in 2013. (Amend. Comp. at 48-49, 76-78; MacDonald Aff. at 41-42, 70-72). Brodkorb claims the

⁹ The Director of the Office of Lawyers Professional Responsibility filed a petition for disciplinary action against MacDonald alleging various acts of professional misconduct. After MacDonald responded to the allegations, the Minnesota Supreme Court appointed a referee, who held a hearing and determined that MacDonald’s conduct violated certain provisions of the Minnesota Rules of Professional Conduct. The referee recommended that the Supreme Court impose a “60-day suspension followed by 2 years of probation, and that [the Supreme Court] require MacDonald to undergo a mental-health evaluation.” (Brodkorb Aff., Ex. A at 2). In an opinion filed on January 17, 2018, the Supreme Court concluded that the “referee’s findings and conclusions were not clearly erroneous and that a 60-day suspension followed by 2 years of supervised probation is the appropriate discipline for MacDonald’s conduct. We decline, however, to impose a mental-health evaluation as a condition of MacDonald’s probation.” *Id.* As such, Defendants’ reference to the referee’s recommendation that MacDonald undergo a “mental health eval” is factually accurate notwithstanding the fact the Supreme Court ultimately declined to adopt the referee’s recommendation.

“photograph in question is a photograph of Plaintiff. It is a booking photo, a public record obtained by me, and available to the public at large, from Dakota County Sheriff’s Department, maintained on the county jail’s booking photo database. I posted this photo in connection with articles where it was relevant to the story.” (Brodkorb Aff. at 11-12).

Significantly, neither tweet refers to the photograph of MacDonald being a mug shot or a booking photograph. There is no indication in the photograph or underlying caption that MacDonald has been arrested or booked. The photograph is not a two-part, front and side view, typical of many mug shots. It is arguably not a flattering photograph of MacDonald, but there is nothing about the photograph that suggests it is a mug shot or booking photograph.

Significantly, the MissinginMinnesota website clearly displayed a booking photograph taken of Sandra Grazzini-Rucki in an August 3, 2016 article entitled, “Attorney: Sandra Grazzini-Rucki used donated ‘food stamp cards’ for \$50K bail.” (Brodkorb Aff., Ex. B). The photograph of Grazzini-Rucki shows a two-part head shot (one front-view and one side-view) and the article attributes the source of the photograph as the Dakota County Sheriff’s Office.

By contrast, the tweeted photograph of MacDonald does not contain similar indicia of a classic mugshot. Not even the reference to MacDonald being a “person of interest” in the June 5, 2018 tweet transforms the photograph into anything more than an unflattering image of Plaintiff MacDonald, which Defendants placed beside a photograph taken from her promotional campaign materials for Supreme Court.

What Plaintiffs are really arguing is that the unflattering photograph and caption containing the reference to MacDonald being a “person of interest,” even if true or lacking actual malice, are defamatory by implication. As set forth below in Section III, Minnesota does not recognize a claim for defamation by implication involving public figures.

In summary, on the full record presented, even with all inferences drawn in Plaintiffs' favor, no reasonable jury could find that Plaintiffs have proven actual malice under the heightened clear-and-convincing evidence standard. Even assuming Defendants were wrong about MacDonald being a "person of interest" or posting a photograph "as if a mugshot," no evidence in the record indicates that Defendants "in fact entertained serious doubts as to the truth of" the statements made in their social media tweets and articles. Because Plaintiffs have not offered evidence sufficient to dispute Defendants' testimony that they believed the statements to be accurate, the Court has no choice but to grant Defendants' motion for summary judgment on Count 2.

III. DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT ON PLAINTIFFS' DEFAMATION BY IMPLICATION CLAIM (COUNT 2).

In Count 2, Plaintiffs assert a claim for defamation by implication. Plaintiffs argue that if some of Defendants' representations concerning MacDonald are deemed to be "technically true," Defendants' website "creates a false impression concerning Ms. MacDonald's career as a lawyer, as involved in ongoing criminal activity, ongoing criminal investigation by police, a drunk, mentally ill, . . ." (Amend. Comp. at 113) As set forth above, there are no genuine issues of material fact precluding judgment for Defendants on the basis of truth or the absence of actual malice. Rather the issue in Count 2 is whether the inferences that can be drawn from those statements establish actionable defamation.

In *Diesen v. Hessburg*, 455 N.W.2d 446, 451 (Minn. 1990), the Minnesota Supreme Court refused to recognize defamation by implication in cases involving defamation of public officials. Applying Minnesota defamation law to a county attorney's claim against a Duluth-area newspaper, *Diesen* held that a public-official plaintiff could not base a defamation cause of

action on true statements that, because of the particular juxtaposition of the statements or the omissions of particular facts, became false. *Id.* at 451-52.

In *Schlieman v. Gannett Minnesota Broadcasting, Inc.* 637 N.W.2d 297 (Minn. Ct. App. 2001), the Minnesota Court of Appeals noted that *Diesen*'s rejection of defamation by implication is consistent with First Amendment principles that guarantee a free press:

It reaffirms the body of Minnesota case law that provides that 'true statements, however disparaging, are not actionable.' *Diesen* also avoids the difficulty of defining what is being implied, with the attendant problem that 'the implication varies with the impicator.' And significantly, *Diesen* spares Minnesota courts the challenging task of adapting the constitutional-malice standard to statements that are true on their face and false only by implication." *Id.* at 303-04 (citations omitted).

Schlieman acknowledges that *Diesen* is a narrowly focused holding that applies "to only one type of public-official defamation action---an action that attempts to establish defamation through false implications from true statements." *Id.* at 304. However, the Court of Appeals was quick to note that *Diesen* does not change the basic components of public-official defamation law in cases that do not involve defamation by implication. *Id.* Courts must still interpret the defamatory-meaning element of a defamation action in light of the context surrounding the alleged defamatory statements. *Id.*

Here, one may infer certain negative connotations from statements that MacDonald is a "person of interest" or was convicted of test refusal and obstructing legal process (as opposed to driving under the influence). Additional negative connotations may arise from Defendants' multiple publication of an unflattering photograph of MacDonald that makes no reference to the photograph being a mugshot but reminds readers that MacDonald is a "person of interest" in the disappearance of two young girls. However, publication of those true statements cannot form the basis of a defamation by implication claim in Minnesota, especially involving a public figure like

MacDonald. The Court has already addressed the context in which these alleged defamatory statements were made and ruled that they do not rise to the level of actionable defamation either because the statements were true or lacked the requisite showing of actual malice by Defendants.

Because Plaintiffs do not have a cognizable claim for defamation by implication, the Court grants Defendants' motion for summary judgment as to Count 2 of the Amended Complaint.

RHK

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

In Re the Matter of:

Court File No.: 62-CV-18-4145

Michelle L. MacDonald, MacDonald Law Firm, LLC,

Plaintiff,

v

COMPLAINT

Michael Brodkorb individually and
doing business as www.MissinginMinnesota.com,
Missing in Minnesota, LLC and John and Mary Does,

Defendants.

Michelle L. MacDonald and MacDonald Law Firm, LLC, for their complaint against
Defendants Michael Brodkorb, et al:

INTRODUCTION

1. Plaintiff, Michelle MacDonald ("Ms. MacDonald") has practiced law since 1987, and has been a member and operated MacDonald Law Firm, LLC since 2007. Ms. MacDonald is a candidate for the Supreme Court of Minnesota.

2. In July of 2014, Defendant Michael Brodkorb (hereinafter "Brodkorb") introduced himself to Ms. MacDonald purportedly to start an honest dialogue. Brodkorb's contact with Ms. MacDonald, included numerous in-person meetings, phone calls, emails and text communications, unaware of Brodkorb's background and general reputation for lack of integrity and unethical practices.

3. Years later, Brodkorb complained to Ms. MacDonald about her liking a Facebook post that was derogatory about him. After she began thwarting his advances and requests for interviews involving attorney-client privilege and after her client, Sandra Grazzini-Rucki obtained a harassment restraining order against him in September, 2016, Brodkorb began a social

Facebook post that was derogatory about him. After she began thwarting his requests for interviews and after her client, Sandra Grazzini-Rucki obtained a harassment restraining order against him in September, 2016, Brodkorb began a social media campaign against Ms. MacDonald. He began posting false and derogatory data, with intent to harm Ms. MacDonald's personal and professional reputation. This also occurred after he began associating with David Rucki, an adverse party in several of Ms. MacDonald's cases for Ms. Grazzini-Rucki.

5. In June of 2016, Brodkorb established a website, MissinginMinnesota.com, and then in May 2017, Missing in Minnesota, LLC (hereinafter "website"). Brodkorb became increasingly aggressive in May of 2017, with the addition of Allison Mann to the website, who also serves as a paralegal for David Rucki, the adverse party in various court cases that Ms. MacDonald and MacDonald Law Firm, LLC have litigated for their client against him.

6. After Brodkorb received cease and desist notices from Ms. MacDonald and her attorneys, Brodkorb ramped up by repeating his false statements, and in January of 2017, he began posting images taken of Ms. MacDonald 3 years earlier, with various posts. Even though she had years earlier provided him with the true circumstance of the photographs, he posted the image solely to defame her. Specifically, Brodkorb and the website began using the image with the false claim she is a "person of interest" in a criminal investigation, and has not cooperated with police, and with any random posts, to defame her, when in fact this is not true.

7. Brodkorb's website evolved into and is a tool designed solely to defame, libel, slander and humiliate Ms. MacDonald.

8. Ms. MacDonald is an attorney with solid professional credentials and a dedicated legal and judicial career representing families and individual family members. By this action, Ms. MacDonald and MacDonald Law Firm, LLC seek to recover damages from Brodkorb and

the website. The posts on the website and those disseminated on social media contain false and defamatory statements and innuendos concerning Ms. MacDonald's experience as a duly licensed and practicing attorney, one of the qualifications to run for Judge.

9. By way of example, on June 5, 2018, the day Ms. MacDonald, a 30 year attorney, with no client complaints with Lawyer or Judicial Boards, filed as a candidate for Minnesota Supreme Court, Brodkorb posted and tweeted an image of Ms. MacDonald, as if a mugshot, alongside her candidacy headshot, stating "Michelle MacDonald, who was labeled a "person of interest" in the disappearance of missing children, filed to run again for the Minnesota Supreme Court." Brodkorb also appeared on a radio program, The Matt McNeil Show, am950 to further defame Ms. MacDonald, and Matt McNeil tweeted that Ms. MacDonald is a "masochist" defined as "a person who derives sexual gratification from their own pain or humiliation" defined as "mad, insane, disturbed, unbalanced, crazed, demented, berserk, lunatic, crazy, wacko, mental", and other responses include that Ms. MacDonald is "seriously deranged", and "needs a strait jacket rather than a judgeship." (EX. 2.1-2.3)

10. Brodkorb's statements on the website, in tweets and social media and on radio programs are false, defamatory and injurious to Ms. MacDonald's professional and personal reputation.

11. In addition to the written statements, Brodkorb has made numerous telephone contacts to those who associate with Ms. MacDonald, including her colleagues, potential and former clients.

12. By way of example, on June 5, 2018, the day she filed to run for office, Brodkorb and the website tweeted a false representation relating to Ms. MacDonald's former client, after she was invited and attended a press conference, when Brodkorb had never contacted him,

stating "Update; Dwight Mitchell, the lead plaintiff in this lawsuit is upset that Michelle MacDonald "crashed" their press conference. Mitchell claims MacDonald was not invited. MacDonald walked in wearing campaign stickers before she filed for MN Supreme Court and stood with parents." And then tweeted "It's easy to understand Mitchell's frustration...Her "crashing" a press conference of parents is completely inappropriate."

13. In fact, Ms. MacDonald was invited, and Mr. Mitchell, her former client, never spoke to Brodkorb, nor would he or did he ever say such a thing. When Ms. MacDonald emailed Brodkorb about his false statement, she learned her emails were also blocked, and then Brodkorb began corresponding with Mr. Mitchell relating to Ms. MacDonald's false "claims" to further defame her by directing him to the website. In addition, his current attorney, Erick Kaardal, is an esteemed colleague of Ms. MacDonald, and directed many of the parents there to her for direction and assistance (EX. 3.1-3.3).

14. As another example, when Ms. MacDonald, who is admitted to practice in the United States Supreme Court of America, attended Mr. Kaardahl's oral arguments in Washington, DC for MN Voter's Alliance, and when Ms. MacDonald spoke at a Senate Judiciary Hearing, Brodkorb tweeted his defamatory comments.

15. In numerous posts, Brodkorb has consistently attempted with malice and by use of the website to turn anyone Ms. MacDonald associates with, including friends, colleagues, clients, supporters and the general public, against Ms. MacDonald and to defame her.

16. The website and social media's highly defamatory statements and depictions are designed to shock the public, create hatred, scorn, contempt, ridicule and disgrace Ms. MacDonald.

17. In addition to telephone contacts, Brodkorb has made numerous verbal statements

to a number of Minnesota citizens and public servants in an effort to injure Ms. MacDonald's reputation in the community, and to interfere with Ms. MacDonald's election to the Minnesota Supreme Court.

18. Brodkorb has blocked Ms. MacDonald and others who supports her or her client, from his social media, and from emails, and in doing so prevents Ms. MacDonald from knowledge of and from determining for herself the extent of his wrongdoing (which she hears about from supporters. As such, Brodkorb and the website have obstructed from her from any defense or response, including his failure to post anything positive that he certainly is aware of, in order to promote and disseminate the defamatory content only.

19. Aside from blocking any data contrary to the defamation, Brodkorb has and continues to omit and disregard material data provided or known to him, so that he can continue to convey falsities and false implications about Ms. MacDonald on his website and social media by material omission. By intentionally omitting material and information that he knows about, or is provided to him, on the website and Brodkorb's other social media, consistently targets Ms. MacDonald for defamation, false accusations and character assassination, doing this by overt misrepresentations.

20. Brodkorb, along with and joined by Allison Mann, David Rucki's paralegal, continues to ramp up their false statements, repeating them over and over, both on the website and social media, in phone calls, including false images of Ms. MacDonald, as if a mug shot, drunk and mentally ill.

21. Brodkorb, claiming to be a journalist, was provided with, and has and proceeds to violate numerous codes of ethics promulgated by the Society of Professional Journalists. (EX 1) In nearly all of his posts on the website, his violations of the code of ethics include and are not

limited to:

- a. Obstructing “public enlightenment” which is “the forerunner of justice and the foundation of democracy,”
- b. Failure to “seek the truth and providing fair and comprehensive accounts of events and issues,”
- c. Failure to “strive to serve the public with thoroughness and honesty,”
- d. Failure to have “professional integrity” and “credibility,”
- e. Failure to be dedicated to “ethical behavior” and “the principals and standards” of practice for journalists.

22. Brodkorb and the website engage in deliberate distortion, and fail to “seek the truth and report it” and fail to be “honest, fair and courageous in gathering, reporting and interpreting information” including the failure to:

- a. “test the accuracy of the information from all sources and exercise care to avoid inadvertent error,”
- b. Give “subjects of news stories” the “opportunity to respond” to allegations of wrongdoing.
- c. “identify sources” their “reliability”, and question their motives, in particular David Rucki and his paralegal, Allison Mann,
- d. “make certain that “headlines, news teases, and promotional material, photos, video, audio, graphics, sound bites and quotations do not misrepresent”, and they do not oversimplify or highlight incidents out of context,”
- e. Refrain from “distorting the context of news photos or video,”
- f. Avoid “misleading re-enactments” or “staged news events,”

- g. "avoid "surreptitious methods of gathering information,"
 - h. "tell the story of diversity and magnitude of the human experience boldly, even when unpopular to do so,"
 - i. "examine their own cultural values and avoid imposing those values on others,"
 - j. Avoid "stereotyping," by "social status"
 - k. "support the open exchange of views even views [he] finds repugnant,"
 - l. "give voice to the voiceless,"
 - m. "distinguish between advocacy and news reporting,"
 - n. To label analysis and "not misrepresent fact or content,"
 - o. "distinguish news from advertising,"
23. Brodkorb and the website violations also including the failure to "Minimize harm", "show compassion for those affected by adverse news coverage" and "be sensitive when using photographs of those effected by tragedy or grief."
24. Brodkorb and the website believe they have "a license for arrogance" in gathering and reporting information that may cause harm or discomfort and has failed to show "good taste".
25. Brodkorb and the website have failed to "be judicious about naming criminals suspects." Brodkorb and the website have failed to act independently, failed to "avoid conflicts," remain free of associations" that compromise integrity and damage credibility, "refuse gifts, fees or favors." Brodkorb and the website have failed to be accountable to readers, listeners, and viewers, and each other.
26. All of the above violations of the Code of Ethics by Brodkorb and the website culminate in defamation and "fake news."

PARTIES/VENUE AND JURISDICTION

27. Plaintiff, Michelle L. MacDonald is an individual citizen residing in Dakota County, Minnesota, an attorney and officer of the court who has been practicing law since 1987, and is a candidate for the Supreme Court of Minnesota, www.MacDonaldforJustice.com.

28. Plaintiff, MacDonald Law Firm, LLC is a Minnesota limited liability corporation with its principal place of business in West St. Paul, Dakota County Minnesota.

29. Defendant, Michael Brodkorb ("Brodkorb"), is an individual citizen and resides at 4136 Countryview Drive, Eagan in Dakota County, Minnesota 55123. Brodkorb does business as www.missinginminnesota.com

30. Allison Mann publically joined Missing in Minnesota on May 24, 2017, and is a paralegal for David Rucki.

31. Defendant Missing in Minnesota, LLC ("website") is a Minnesota limited liability corporation incorporated on May 25, 2017, with its principal place of business in North St. Paul, MN. The websites registered office address is 2440 Charles Street North, Suite 242, North St. Paul, Ramsey County, Minnesota 55109.

32. Defendants John and Mary Does (hereinafter "Defendants Doe") are natural persons, municipal corporations or business corporations. Defendant Does' identity is unknown to Plaintiffs at this time.

33. This action arises from incidents that occurred leading up to and following incidents on June 22, 2016, when Missing in Minnesota was founded by Brodkorb, including incidents before and after May 27, 2017 when Allison Mann joined Brodkorb and May 25, 2017, when the website was incorporated and thereafter.

34. This Court has personal jurisdiction over the Plaintiffs and Defendants, and has

subject matter jurisdiction over the claims set forth herein.

35. All material events described herein originated and occurred in Dakota and Ramsey Counties, Minnesota. Venue is thus proper in this district pursuant to Minn. Stat. §542.09 because the cause of action, or some part thereof, arose in Ramsey County, Minnesota.

BACKGROUND FACTS

Michelle MacDonald

36. For 30 years, Ms. MacDonald has been an attorney representing thousands of individuals, families and family members and businesses, before hundreds of judges, primarily family law. Ms. MacDonald served as a conciliation/small claims court Judge, Hennepin County (1999 to 2014); and Adjunct Referee/Arbitrator in family and civil court (1992-2011), presiding over small claims court matters and helping to resolve family court cases referred by Judges to the settlement program. Ms. MacDonald received a Years of Service Recognition Award, Conciliation Court, Hennepin County.

37. Ms. MacDonald is a restorative circle facilitator and educator, mediator, founder and volunteer President of Family Innocence, a nonprofit dedicated to keeping families out of court: resolving conflicts and injustices peacefully (2011- present). She is also Volunteer President and Board Member of FAMILYcourt.com, INC. (2014 –present) that published: *Bullied to Death: Chris Mackney's Kafkaesque Divorce*, to which Ms. MacDonald contributed and edited. Ms. MacDonald co-authored *Sandra Grazzini-Rucki & the World's Last Custody Trial*, and contributed and edited *For What it's Worth*, by Fletcher Long.

38. Ms. MacDonald is a founding member of the Family Law reform/Child Custody/Parent Time Dialogue Group, and Divorce without Courts, now Cooperative Private Divorce groups to support family law reform and Cooperative private divorce legislation. Ms.

MacDonald has been recognized by the MSBA North Star Lawyers Program, for her continued pro bono efforts (2013-2017). For years, she has been a member of the Minnesota Bar Association, including the Family Law, Children and the Law and Alternative Dispute Resolution sections, and past co- chair of the professionalism committee. She is a member of the Amdahl Inn of Court, and juris divas groups.

39. On January 17, 2018, Ms. MacDonald was suspended from the practice of law for 60 days based on a single report of a Judge {Knutson} to the Board of Lawyers in January 2014. The Judge lodged the complaint against Ms. MacDonald after she reported him to the Board of Judicial Standards (of which he is a member) for serious civil rights violations of herself and her client.

BACKGROUND

Michael Brodkorb and the Website

40. On or about July of 2014, Defendant Brodkorb contacted Ms. MacDonald, purporting to be a reporter for the Star Tribune, and has since been terminated). Ms. MacDonald had been endorsed by the Republican Party of Minnesota to run for the Supreme Court, and began an honest dialogue with Brodkorb about her candidacy and court cases she was involved in. They had numerous meetings in person, by telephone, including communications by text and email where Brodkorb asked for, or Ms. MacDonald volunteered numerous substantiating documentation about cases she was involved in, including links, court file numbers, court pleadings, video, security video, and photographs.

41. For example, Ms. MacDonald, upon request of Defendant Brodkorb for data, provided him with the videotaped interview of Ms. MacDonald conducted by the Judicial Election Committee (made up of 20 members, 2 from each of 10 judicial districts), where she

described her unlawful traffic stop on April 5, 2013, and her having been made a client's child custody trial in handcuffs, a wheelchair with no shoes, glasses, files, or client and missing children on September 13, 2013, after suing the presiding Judge in federal court for civil rights violations.

42. Ms. MacDonald included the results of a blood test indicated ZERO alcohol taken on April 5, 2013, the day of her traffic stop, and was ultimately acquitted in September 2014 of drunk driving. Brodkorb was also provided with data relating to her taking the photograph in court of a smiling, waving deputy. In fact on April 30, 2015 Brodkorb wrote: about "a bizarre incident" in 2013, "where MacDonald was handcuffed, placed in a wheel chair and wheeled back into the courtroom by a deputy. The hearing resumed and MacDonald continued to represent her client, but she was in a wheel chair."

43. Ms. MacDonald provided Brodkorb with the favorable results of a court ordered psychological evaluation by Associated Psychologists Dr. Greg Hanson (relating to the dismissed DUI charge) where he depicted her as "a highly independent person", "outspoken," "mildly rebellious" but "non-conforming would be the primary word." Dr. Hanson also stated that she is "not afraid to go [her] own way" and that "the positive side to that of course would be leadership". Brodkorb learned that her court ordered psyche evaluation "does not indicate any depression or anxiety or anything I [Dr. Hanson] would be worried about in terms of mental health." Dr. Hanson said "It just suggests that type of personality. More of a leader, leadership orientation, all of that." In addition, Ms. MacDonald's only traumatic experience related to her treatment by the judge after taking the photograph in court.

44. Through his various meetings and interactions with Ms. MacDonald, and receipt of data, including the results of her blood test and psychological evaluation, Brodkorb was aware

that Ms. MacDonald was not a drunk, drunk driver or mentally ill, and knew she is a responsible drinker and in good mental health.

45. By way of example, on December 17, 2014, Ms. MacDonald provided Brodkorb with Ms. MacDonald's own Notice of Complaint dated September 25, 2014, about the trauma she experience, relevant here, by Dakota County Deputy Sheriffs, including complaints that "Many male deputy Sheriffs deliberately "found" a reason to handle or otherwise interact with MacDonald throughout the night...Given their blatant disregard for basic civil rights, Respondent deputy sheriffs made MacDonald even more fearful when they insisted on taking pictures of her while the two used this as an excuse to improperly handle and touch her while referring to MacDonald as 'beautiful' " This Notice of Complaint describing the inappropriate treatment and traumatic experiences, and included photographic images provide to Brodkorb.

46. In January 2015, Brodkorb was sent a copy of Ms. MacDonald's own federal court civil rights action against deputy sheriffs, specifically the complaint, relevant here, relating to the photographs that stated "given their blatant disregard for constitutional rights, Dakota County Individual Defendants made MacDonald more fearful when they insisted on taking pictures of her while two Dakota County individual Defendants used this as an excuse to improperly handle and touch her while referring to MacDonald as "beautiful". And several months after MacDonald's criminal case was dismissed for lack of probable cause, Dakota County Sheriffs have continued their abuse and intimidation of MacDonald by releasing at least one of these pictures to reporters, and making unnecessary appearances when she is in court in Dakota County." Brodkorb was aware of the photograph and its origin during Ms. MacDonald's traumatic experience. The reporter referred to was from the Pioneer Press, who released the photo on the internet for a few minutes, and then took it down immediately upon

Ms. MacDonald's contact. The photo never surfaced after that until years later by posted by Brodkorb on the website and social media.

47. On March 8, 2015, Ms. MacDonald received a text from Brodkorb "I'm confused: So I'm the bad guy now?" Apparently Ms. MacDonald had liked someone's Facebook post. Ms. MacDonald responded "This is Michelle MacDonald's cell. Did you intend to text me about being a bad guy? Defendant Brodkorb stated. It is Michael. Did you read the Facebook post you just liked? Ms. MacDonald said, "Oh. Yes. I did not like it to make you a bad guy. I got the impressions she thinks you don't support me. I liked it because she liked my brief for Tuesday's hearing."

48. On April 22, 2015, Ms. MacDonald sent Brodkorb images of her being wheeled to the courtroom in handcuffs stating "they are humiliating, September 12, 2013."

49. With respect to the images, Brodkorb replied "Horrible". Ms. MacDonald continued "Thank you. These are screen shots from the portions of the security video it used to unsuccessfully prosecute me for criminal contempt..." Defendant Brodkorb replied "Do you think I could do a story about how horrible this ordeal has been for Sandra [Grazzini-Rucki]? Seems everything has been taken from her..." Ms. MacDonald replied "as you know I was not booked or charged and spent after the trial on September 12[13] in jail, until media left, September 13[14], the afternoon."

50. On April 24, 2015, relating to representation of her client Sandra Grazzini-Rucki, David Rucki's adversary, Ms. MacDonald texted that "the officer called today. I am no longer at liberty to talk to you." Brodkorb asked "are you cooperating with police? And Ms. MacDonald answered "yes".

51. On May 3, 2015, Brodkorb wrote "Next story I'm doing is about Knutson locking

you in wheelchair... I'll need to interview you...Knutson has not responded." Declining the interview, Ms. MacDonald responded, by again directing Brodkorb to data and video she had provided to him: "Have you read the lawsuit? I know you read the federal one v. Knutson for Sandra. Have you watched the security video?"

52. Brodkorb responded, "Yes to all" . Ms. MacDonald began refusing to talk to him, her client being under investigation for a crime by police.

53. On July 14, 2015, when Ms. MacDonald wrote " I had contacted the FBI the week following the Sept 11-12 custody trial whereas Sandra's attorney, I was made to represent her before Judge Knutson in handcuffs, a wheelchair, with no glasses, shoes, pen, paper, files, client, and missing children. Sandra had sued Judge Knutson in federal court the day before for civil rights violations for ordering both parents have no contact and that she leave her home, possessions, and 5 children, no contact at their schools, or through third parties, after a phone call with the judge and no motion paperwork. Then Judge Knutson permanently terminates all of her custodial rights in a November 25 2013 order , attached as an exhibit to a motion to dismiss the federal action.

54. Ms. MacDonald continued, "By corruption, I mean systemic corruption because a system that does this to a family breaking up, and just keeps on going business as usual, ie. a child custody trial keeps going without the kids, mother and her attorney in handcuffs, is corrupted."

55. At some point, Ms. MacDonald was talking on the phone with Brodkorb, and put her husband on the phone, to explain that he had accompanied her to the FBI visit. Ms. MacDonald's husband became exacerbated with Brodkorb, swore at Brodkorb, which is out of character for him. The extent of Brodkorb's refusal to hear or report anything that he did not

want to hear, or did not fit into his own narrative was becoming clear.

DEFENDANTS' FALSE AND DEFAMATORY STATEMENTS

56. In October 22, 2015, Ms. MacDonald sporadically texted Defendant Brodkorb with a photo of her with Governor Mark Dayton, where she was accepting an award, informing him that *"Governor signed a family law bill which was the result of the custody/parenting time dialogue group, a circle process with a facilitator and consumers, lawyers, legislators, mediators, judges, educators, custody evaluators... you name it. It was a two year process I have been actively involved in,"* referring to her involvement in a custody/parenting time dialogue group. Ms. MacDonald sent another picture of her with the Governor, Representative Peggy Scott and a few others in the group.

57. Rather than acknowledging the accomplishment of Ms. MacDonald and the dialogue group as news, Brodkorb reacted by replying via text: *"Peggy Scott was not aware you were a 'person of interest' in a case involving missing kids."* Apparently, Brodkorb contacted and told several others this false report in person, as he also texted *"Many I spoke with today did not feel it was appropriate for you to attend, as police do wish to question you about your involvement with the disappearance of two missing girls."* Ms. MacDonald reprimanded and corrected Brodkorb.

58. On February 16, 2016, Brodkorb falsely reported in a tweet that Ms. MacDonald had a DUI conviction, and that it was upheld by the Court of Appeals. In fact, Ms. MacDonald had been acquitted of DUI.

59. After reprimands from Ms. MacDonald, Brodkorb may have ceased the defamatory remarks and posts for several months, until he started doing business as Missing in Minnesota, in June 2016, joined by Allison Mann, in May 2017, as described below.

BRODKORB BEGINS DEFAMATORY POSTS ON THE WEBSITE

60. On June 22, 2016, Brodkorb started the website www.MissinginMinnesota.com. Upon information and belief, Brodkorb was privately conferring with David Rucki, and his paralegal Allison Mann, up to and until Allison Mann joined him on the website publically, and continued in this venture on the website on and after May 24, 2017.

61. On August 3, 2016, it came to Ms. MacDonald's attention that Brodkorb was labeling Ms. MacDonald as a "person of interest" in a criminal felony case on the website and in social media. Ms. MacDonald repeated to Brodkorb, that it was not true, defamatory, and to pull his false comment about this person of interest now, labeled by him." In text messages, Ms. MacDonald continued "pull it now. It's defamation at this point. Pull it. These are your quotes. These are your words. You labeled me, not them. Its' you. Take it down. Stop your cherry picking propaganda now or expect a lawsuit. This is your notice. Take this down now. I have been extremely tolerant. No more." Ms. MacDonald continued that Brodkorb assigned the label. Not the police. It's your [Brodkorb's] lie that he [Brodkorb] has perpetuated. I notified Brandon [Stahl on April 29, 2015] and he stopped. You perpetuate a lie to today.

62. Brandon's story was April 29, 2015. Ms. MacDonald went on "you [Brodkorb] are perpetuating snapshots to engineer your propaganda. You are a cheating husband and drunk. Is that true now?"

63. On that same day she again said "this is your notice. Take it down." "I'm done engaging. If it is not taken down, you will be sued for money damages. And any defamation about mine or anyone's business is strict liability."... Brodkorb lied that "Since April 2015, you have been labeled as a "person of interest" in this case, which has been reported by numerous outlets."

64. Ms. MacDonald is not aware of any other outlets that have reported this, and if there are any, it is due to the defamation of Brodkorb on the website and social media.

65. You see, years earlier, on April 29, 2015, when Ms. MacDonald was representing her client, Brandon Stahl, a reporter for the Star Tribune, published a story that "Samantha and Gianna Rucki ran away from their Lakeville home in April 2013 amid their parents' bitter divorce and have been missing ever since. Lakeville police detective Jim Dronen said there are at least four persons of interest in this case, including the girls' mother Sandra Grazzini-Rucki, and her attorney Michelle MacDonald. Immediately upon reading this article, Ms. MacDonald contacted Brandon Stahl that it was false, and he and the Star Tribune ceased perpetuating or publishing anything of the sort.

66. Ms. MacDonald also contacted the Lakeville police who confirmed she was not a person of interest, or suspect, that they do not use those terms, and that her complaint was with Brodkorb, and there was no investigation of her.

67. This demonstrates the bad faith of Brodkorb in posting the false story, originally complained about to Brandon Stahl of the Star Tribune, who discontinued the statement of person of interest which was not true and not in quotes, and not a police quote. Brodkorb continues to put "person of interest" in quotes to attribute as a police statement.

68. In response to Ms. MacDonald's notice to cease and desist in text messages, on August 4, 2016, Defendant Brodkorb texted to her that "the address of my attorney for your records is Greg Walsh, and his address. However, as described below, after she wrote various letters to Mr. Walsh, Mr. Walsh responded on January 16, 2017 "I have not been retained to represent Mr. Brodkorb for the matter you allege. Please discontinue sending me letters regarding this matter." Defendant Brodkorb was dishonest about Mr. Walsh's representation of

him.

Ms. MacDonald's Client Gets a Restraining Order against Brodkorb

69. On or about September 12, 2016, Ms. MacDonald's client, Sandra Grazzini-Rucki sought and obtained a restraining order against Defendant Brodkorb, based on stalking, taking unwanted photographs, inciting readers of his blog to send threatening messages and other behaviors. During and after this time, Brodkorb and the website responded by ramping up their attacks on Ms. MacDonald and her client.

70. Brodkorb faulted Ms. MacDonald and her client for losing jobs, including with Star Tribune and MinnPost, which he told Ms. MacDonald. The truth is he most likely lost the jobs by failing to adhere to the journalists' code of ethics. (EX 1)

Ms. MacDonald Sends More Cease and Desist Notices to Brodkorb

71. On August 3 and August 18, 2016, Ms. MacDonald wrote a Notice to Cease and Desist to attorney Gregory Walsh, whom Defendant Brodkorb represented was his attorney (Ex. 4.1-4.2).

72. Because attorney Walsh was nonresponsive, at the hearing on her client's restraining order against Brodkorb on September 22, 2016, Ms. MacDonald served the letters on the attorney representing him in the restraining order, Nathan Hanson, and then reported to Mr. Nathan Hanson that when after she served the letters to cease and desist on Mr. Hanson, Brodkorb said that he was going to tweet something even more damaging, that Ms. MacDonald is a "suspect" in a criminal matter. Brodkorb did in fact report that Ms. MacDonald was a "suspect" in a crime after his threat, which was false.

73. Brodkorb has blocked Ms. MacDonald from his social media including his tweets or from contributing to the website, so that others can view his defamatory comments, and not

her. Ms. MacDonald was denied the ability by Brodkorb to be even be aware of the defamatory comments, let alone to defend, contribute or respond. In addition, any of her or her client's supporters were also blocked.

74. Brodkorb and the website have denied access to defend or respond to postings, and obstructed any data that contradicts the false claims, implications and spins.

75. On September 22, 2016, Ms. MacDonald emailed attorney Nathan Hanson about the defamatory content, the cease and desist, and about being blocked (Ex. 5). Brodkorb continued to ignore the notices and letters from Ms. MacDonald to cease and desist, requests for corrective action, instructions from his attorneys, and instead proceeded to ramp up and repeat *over and over again* the defamatory comments, indicating that Ms. MacDonald was engaged in criminal activity, being investigated, and not cooperating with police, which is false.

Defendants Begin Posting Image To Further Defame Ms. MacDonald

76. As part of the ramping up of his defamation, on January 5, 2017, Brodkorb first posted one of the image Ms. MacDonald told him about, where she had provided him the security video, that he himself had responded as "horrible." (Ex. 6)

77. These images were taken during her trauma of which Brodkorb was aware over 3 years earlier. The image was not a mug shot, Ms. MacDonald was not drunk or mentally ill as falsely depicted in the image. Brodkorb knew of the origin of the images, -----that the photograph had been one of the photos taken during her torturous treatment the subject of which is a pending lawsuit in September 2013, reported to him. Defendants were also of Ms. MacDonald's lawsuit and actual appearance that day, having viewed the security videos.

78. Defendants began by using this image once, and then repeatedly began using it throughout the website, tweets and social media relating to any posts about Ms. MacDonald,

through today.

79. The image first appeared in a tweet by Defendants on or about January 5, 2017 where he highlighted a “mental health eval for Michelle MacDonald”, even though Brodkorb knew of the origin of the image, knew Ms. MacDonald, knew she was in good mental health, and had even been provided with the results of her mental health evaluation. Brodkorb posted the defamatory image to maliciously portray that Ms. MacDonald as a drunk, criminal and mentally ill.

Ms. Macdonald Notifies Brodkorb To Remove The False Image

80. Ms. MacDonald tried to deal directly with Brodkorb when she received by google alerts publication of the image and post: ‘Please cease and desist. In particular, take down the photo. While the damage has been done, you have an opportunity to mitigate. It is now the first photo when one googles me and asks for images. The photo had not been published to this point, or showed up on the internet.

81. On January 5, 2017, Ms. MacDonald wrote again to Brodkorb’s alleged attorney Gregory Walsh, reminding him of the earlier letters, stating “today I learned that Mr. Brodkorb posted a photo of me which is attached. I am told the photograph has been up for several hours. Each hour is actionable, as with the statements.” And “unfortunately I learned that Mr. Michael Brodkorb’s hostility towards me continues, along with comments on social media, and incidents of defamation, libel and slander of me and my employment as an attorney.” (Ex. 7.1-7.2)

82. With no response from Mr. Walsh, on January 10, 2017, Ms. MacDonald wrote to all of Defendant Brodkorb’s other attorneys, who represented him in her client’s harassment restraining order, including Ms. Walsh, that **the photo was now the number one image for Ms. MacDonald on google**, and repeated and urged Brodkorb to mitigate damages, and cease his

behaviors (Ex. 8.1-8.3).

83. On January 16, 2017, attorney Gregory Walsh wrote he was not retained to represent Defendant Brodkorb as alleged (Ex. 9).

84. On January 26, 2017, Ms. MacDonald again informed Brodkorb's attorney, Nathan Hansen, of her legal claim, and that he continued to post the image on unrelated stories, and he has persisted and stubbornly repeated his behavior.

85. Ms. MacDonald noted "He [Brodkorb] seems to be baiting us to sue him, maybe for publicity himself." Ms. MacDonald learned of another post on February 16, and that Brodkorb had been on a radio program defaming her. She wrote attorney Hanson again on February 16, 2017 with these concerns.

Ms. MacDonald Hires Attorneys to Again Notify Brodkorb to Cease and Desist

86. After repeated written attempts to Brodkorb to cease and desist defamation, including texts, emails, and letters, Ms. MacDonald hired attorneys who wrote letters and emails to attorney Nathan Hanson on March 17, 2017, and again on April 4, 2017 requesting Brodkorb cease and desist (Ex. 10).

87. Since the first use of the image, and after the numerous notices to cease and desist, Brodkorb and the website repeatedly posts, adding the image of Ms. MacDonald, now throughout his entire website, and on various posts, and social media, alongside mugshots of those wrongly convicted and convicted felons, Sandra Grazzini-Rucki and Dede Evavold, Gina and Doug Dahlen, and includes it on nearly every page, including the front page, sometimes beside a headshot of her.

88. In every story, Ms. MacDonald is wrongly portrayed as involved in criminal activity, under criminal investigation, drunk and mentally ill, all with the knowledge of the truth

about Ms. MacDonald, as a person, and lawyers. Brodkorb even continued after knowing the true origin and circumstances of the images, using it on nearly all of his posts, and repeatedly tweets out the image with any post about Ms. MacDonald labeling her a “person of interest”. This, even after July and September, 2016 when all of the Defendants in the felony criminal cases, including Ms. MacDonald’s family law client, Sandra Grazzini-Rucki, have been investigated, arrested, tried, convicted and sentenced.

89. All stories and content on the website and social media is specifically published in a manner to defame Ms. MacDonald and her law firm, by violating numerous provisions of the Code of Ethics (EX 1) and includes numerous incidents of gas lighting and transposition, falsely depicting Ms. MacDonald as continually involved in criminal activity, a drunk, and mentally ill.

90. On May 24, 2017 paralegal Allison Mann began actively contributing along with Brodkorb on the website. The website accurately depicts Ms. MacDonald as attorney for Sandra Grazzini-Rucki, and Allison Mann is and has been paralegal for David Rucki, a party in family court and other lawsuits involving Sandra Grazzini-Rucki, and has used the site to defame her and anyone who supports her client.

91. Ms. MacDonald’s reputation in the communities has been seriously damaged by Defendants by Brodkorb, the website and social media posts, and flagrant violations of the Code of Ethics, make every story and post, to include the false image, actionable.

DEFENDANTS ARE INVOLVED IN CRIMINAL DEFAMATION

92. Minn. Stat. §609.765 specifically defines defamation as “anything which exposes a person or a group, class or association to hatred, contempt, ridicule, degradation or disgrace in society, or injury to business or occupation.” Defendants continue to expose Plaintiffs to hatred, contempt, ridicule, degradation, disgrace in society and injury to her business and occupation.

93. On May 24, 2018, and June 11, 2018, Ms. MacDonald reported Brodkorb to the Eagan police to investigate and press criminal charges, see file no. 18002830, While Ms. MacDonald is pressing charges against Brodkorb for criminal defamation, for which his behavior qualifies, she was advised by police to file a parallel civil lawsuit.

94. With respect to the criminal complaint, Defendants have knowledge of the false and defamatory character of the content of the website, and social media, and continue to orally, in writing or by publication of the website and social media, communicate the false and defamatory matters to a third person without the consent of Ms. MacDonald.

95. In addition, the communications are unfair, made in bad faith, even as to matters of public concern; the communications are false reports and unfair summaries of any judicial, legislative or other public or official proceedings; and Defendants have no interest or duty with respect to the subject matter of the communication, nor is it made with intent to further such interest or duty.

96. Plaintiff, Michelle MacDonald has worked as a lawyer for 30 years, and has established, operated and worked for MacDonald Law Firm, LLC in the position of attorney. Plaintiff's earnings are largely based on retaining clients and her reputation for honesty and advocacy. Plaintiff's ability to be a successful attorney is dependent upon her reputation within the community at large for providing legal services to her clients.

97. Defendants are familiar with the workings of the law industry and understands that the Plaintiff's livelihood is dependent upon her reputation, and the honesty and duties of a lawyer in advising clients on legal claims, bringing or defending lawsuits, legal rights and obligations, and interpreting laws, rulings and regulations. Defendants know that Ms. MacDonald is honest, strives to attain the highest level of skill, and to improve the law and the

legal profession.

98. Defendants know that a lawyer's responsibility as a representative of clients, and officer of the court, and public citizen are not always harmonious.

99. The "About" page on the website continues to falsely represent that "MacDonald was labeled a person of interest in 2015 by Lakeville police department in the disappearance of Samantha and Gianna Rucki", and imply that she is an adult "who conspired to keep the truth hidden."

100. Defendants have lied, and continue to make false statements and false implications, on the website and social media, and in front of the public and claim and imply that Ms. MacDonald being investigated for criminal activity as a "person of interest," and the sole purpose of which is to defame Ms. MacDonald is a criminal and mentally ill.

Claim for Relief

COUNT 1

DEFAMATION AND DEFAMATION PER SE

101. All of the preceding paragraphs are incorporated into the following claim.

102. Defendants Brodkorb and Missing in Minnesota, LLC have knowingly, intentionally and maliciously made false and defamatory written and verbal statements concerning Ms. MacDonald, the natural tendency of which is to hold her up to hatred, scorn, contempt, ridicule and disgrace in the minds of right-thinking persons, and to deprive her of their friendly society.

103. By knowingly, intentionally and maliciously publishing false and defamatory written and verbal statements concerning Ms. MacDonald, including the false image, Brodkorb and the website intended to, and did defame Ms. MacDonald and her reputation and good

standing in the community, including but not limited to her clients, potential clients, members of the legal profession, the general public, and elected and appointed individuals for the state of Minnesota.

104. Defendants' false and defamatory statements have been made both orally and in writing.

105. Defendants' false and defamatory statements concerning Ms. MacDonald were intended to bring her into disrepute and to harm Ms. MacDonald's personal and professional reputation in the community.

106. Defendants' false and defamatory statements concerning Ms. MacDonald, along with the images of Ms. MacDonald are libelous, slanderous and defamatory on their face.

107. Defendants' false and defamatory statements concerning Ms. MacDonald are not privileged.

108. Defendants' false and defamatory statements, including the false representations in the images, are defamatory per se because they injure Ms. MacDonald's professional reputation.

109. As a direct result of Defendants' publication of knowingly, intentionally and maliciously false and defamatory statements, Ms. MacDonald's reputation and good standing in the community has been harmed and she has been embarrassed, humiliated and has suffered emotional distress.

110. Defendants' publication of knowingly, intentionally and maliciously false and defamatory statements has negatively affected and will continue to negatively affect Ms. MacDonald in connection with her professions, including but not limited to her current service as an officer of the court, an attorney for MacDonald Law Firm, LLC, and her candidacy for

election to the Minnesota Supreme Court.

111. Defendants' are liable to Ms. MacDonald and MacDonald Law Firm, LLC for defamation including libel, slander, in an amount to be determined by the trier of fact.

**COUNT 2
DEFAMATION BY IMPLICATION**

112. All of the preceding paragraphs are incorporated into the following claim.

113. In the alternative, if some of Defendants representations concerning Ms. MacDonald are deemed to be technically true, Defendant's website, taken as a whole, including the false images, creates a false implication concerning Ms. MacDonald's career as a lawyer, as involved in ongoing criminal activity, ongoing criminal investigation by police, a drunk, mentally ill, and false implications about her honesty and job performance and the circumstances surrounding the representation of her clients, and her employment as an attorney.

114. The website statements and false representations in the images imply that in Ms. MacDonald's employment as an attorney, she committed criminal acts and continues to commit criminal acts while representing her clients and is under criminal investigation, which is not true. The statements imply that Ms. MacDonald's employment as counsel and as an officer of the court involved and continues to involve criminal activity and criminal investigation.

115. Defendants published their false statements or false implications about Ms. MacDonald by publishing the statements on the website, and social media, with full knowledge that it would be made to the general public and made it available to the general public. Defendant's false statements or false implications has been republished by Defendants and others and numerous social media sites, through twitter and Facebook and others, and remains prominently displayed on the website, including the false image being on google.

116. Defendants' false statements or false implications have harmed Ms. MacDonald

and MacDonald Law Firm, LLC's reputation.

117. Ms. MacDonald has suffered, among other things, embarrassment, humiliation, and mental distress as a result of Defendants statements about her.

118. Defendants' false statements or false implications about Ms. MacDonald relate specifically to Ms. MacDonald's profession, trade , or business, and thus constitutes "defamation per se."

119. Defendants are liable for the defamatory statements they have made against the Plaintiffs. The conduct of Defendant in publishing false and derogatory statements about the Plaintiff's work performance and abilities, which has harmed the Plaintiff's professional reputation, constitutes defamation per se.

120. Under defamation per se, damages are presumed.

121. Ms. MacDonald and MacDonald Law Firm, LLC are entitled to a substantial award to compensate them for the harm to their reputation, and for the embarrassment, humiliation, and mental distress she has suffered.

WHEREFORE, Plaintiffs, Ms. MacDonald and MacDonald Law Firm, LLC request entry of judgment in their favor and against Defendants, in the following manner:

1. Awarding Ms. MacDonald judgment against the Defendants for damages, including but not limited to compensatory damages, future damages, emotional harm damages, an amount in excess of \$50,000.
2. Awarding MacDonald Law Firm, LLC an amount in excess of \$50,000.
3. Directing Defendants to take down the false image, including a suggested per diem award for the posting of the false image, of \$1,000.00 per day, and as the court deems just, retroactive to January 5, 2017, when Defendants first published the false image.

4. Directing Defendants to take whatever action is necessary to have the current statements and objectionable images removed from the website, social media, and replacing it with a statement that deletes the defamatory language and images.
5. An Order directing Defendants to cease their wrongful conduct, to publicly admit their wrongful conduct and publicly apologize to Ms. MacDonald.
6. Directing Defendants to place reasonable and appropriate advertising, in newspapers, radio and including on social media, correcting the defamatory statements that it reported based on Defendant's statements in the website and social media;
7. Awarding her costs and disbursements and attorneys' fees herein; and
8. Awarding such other and further relief as this Court deems to be just and equitable.

Plaintiffs intend to bring a motion to amend his Complaint, adding a claim for punitive damages pursuant to Minn. Stat. §549.191.

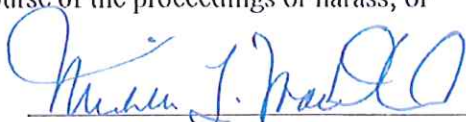
JURY DEMAND

Plaintiffs request a trial by jury.

ACKNOWLEDGMENT

The undersigned hereby acknowledges that costs, disbursements, and reasonable attorney and witness fees may be awarded pursuant to Minn. Stat. §549.211, subd. 2, to the party against whom the allegations in this pleading are asserted, if this party or his or her attorney acted in bad faith; asserted a claim or defense that is frivolous and that is costly to the party; asserted an unfounded position solely to delay the ordinary course of the proceedings or harass; or committed a fraud upon the Court.

Dated: 6/14/18



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Individually and on behalf of
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Code of Ethics

PREAMBLE

Members of the Society of Professional Journalists believe that public enlightenment is the forerunner of justice and the foundation of democracy. The duty of the journalist is to further those ends by seeking truth and providing a fair and comprehensive account of events and issues. Conscientious journalists from all media and specialties strive to serve the public with thoroughness and honesty. Professional integrity is the cornerstone of a journalist's credibility. Members of the Society share a dedication to ethical behavior and adopt this code to declare the Society's principles and standards of practice.

SEEK TRUTH AND REPORT IT

Journalists should be honest, fair and courageous in gathering, reporting and interpreting information.

Journalists should:

- ▶ Test the accuracy of information from all sources and exercise care to avoid inadvertent error. Deliberate distortion is never permissible.
- ▶ Diligently seek out subjects of news stories to give them the opportunity to respond to allegations of wrongdoing.
- ▶ Identify sources whenever feasible. The public is entitled to as much information as possible on sources' reliability.
- ▶ Always question sources' motives before promising anonymity. Only conditions attached to any promise made in exchange for information keep promises.
- ▶ Make certain that headlines, news stories and graphics are factual, photos, video, audio, graphics, sound bites and quotations do not misrepresent. They should not overstate or highlight incidents out of context.
- ▶ Never distort the content of news photos or video. Image enhancement for technical clarity is always permissible. Label montages and photo illustrations.
- ▶ Avoid misleading re-enactments or staged news events. If re-enactment is necessary to tell a story, label it.
- ▶ Avoid undercover or other surreptitious methods of gathering information except when traditional open methods will not yield information vital to the public. Use of such methods should be explained as part of the story.
- ▶ Never plagiarize.
- ▶ Tell the story of the diversity and magnitude of the human experience fully, even when it is unpopular to do so.
- ▶ Examine their own cultural values and avoid imposing those values on others.
- ▶ Avoid stereotyping by race, gender, age, religion, ethnicity, geographic, sexual orientation, disability, physical appearance or social status.
- ▶ Support the open exchange of views, even views they find repugnant.
- ▶ Give voice to the voiceless; official and unofficial sources of information can be equally valid.
- ▶ Distinguish between advocacy and news reporting. Analysis and commentary should be labeled and not misrepresented or conflated.
- ▶ Distinguish news from advertising and shun hybrids that blur the lines between the two.
- ▶ Recognize a special obligation to ensure that the public's business is conducted in the open and that governmental records are open to inspection.

MINIMIZE HARM

Ethical journalists treat sources, subjects and colleagues as human beings deserving of respect.

Journalists should:

- ▶ Show compassion for those who may be affected adversely by news coverage. Use special sensitivity when dealing with children and inexperienced sources or subjects.
- ▶ Be sensitive when seeking or using interviews or photographs of those affected by tragedy or grief.
- ▶ Recognize that gathering and reporting information may cause harm or discomfort. Pursuit of the news is not a license for arrogance.
- ▶ Recognize that private people have a greater right to control information about themselves than do public officials and others who seek power, influence or attention. Only an overriding public need can justify intrusion into anyone's privacy.
- ▶ Show good taste. Avoid pandering to lurid curiosity.
- ▶ Be cautious about identifying juvenile suspects or victims of sex crimes.
- ▶ Be judicious about naming criminal suspects before the formal filing of charges.
- ▶ Balance a criminal suspect's fair trial rights with the public's right to be informed.

ACT INDEPENDENTLY

Journalists should be free of obligation to any interest other than the public's right to know.

Journalists should:

- ▶ Avoid conflicts of interest, real or perceived.
- ▶ Remain free of associations and activities that may compromise integrity or damage credibility.
- ▶ Refuse gifts, favors, fees, free travel and special treatment, and shun secondary employment, political involvement, public office and service in community organizations if they compromise journalistic integrity.
- ▶ Disclose unavoidable conflicts.
- ▶ Be vigilant and courageous about holding those with power accountable.
- ▶ Deny favored treatment to advertisers and special interests and resist their pressure to influence news coverage.
- ▶ Beware of sources offering information for favors or money, and disclosing news.

BE ACCOUNTABLE

Journalists are accountable to their readers, listeners, viewers and each other.

Journalists should:

- ▶ Clarify and explain news coverage and invite dialogue with the public over journalistic conduct.
- ▶ Encourage the public to voice grievances against the news media.
- ▶ Admit mistakes and correct them promptly.
- ▶ Expose unethical practices of journalists and the news media.
- ▶ Abide by the same high standards to which they hold others.

The SPJ Code of Ethics is voluntarily embraced by thousands of journalists, regardless of place or platform, and is widely used in newsrooms and classrooms as a guide for ethical behavior. The code is intended not as a set of "rules" but as a resource for ethical decision making. It is not meant to be under the First Amendment. Legally enforceable.

The present version of the code was adopted by the 1996 SPJ National Convention, after months of study and debate among the Society's members. Sigma Delta Chi's first Code of Ethics was borrowed from the American Society of Newspaper Editors in 1926. In 1973, Sigma Delta Chi wrote its own code, which was revised in 1994, 1997 and 1998.

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

In Re the Matter of:

Court File No.: 62-CV-18-4145

Michelle L. MacDonald, MacDonald Law Firm, LLC,

Plaintiff,

v

AFFIDAVIT OF SERVICE

Michael Brodkorb individually and
doing business as www.MissinginMinnesota.com,
Missing in Minnesota, LLC and John and Mary Does,

Defendants.

I, Thomas Shimota, state that I am at least 18 years of age and that on June 14, 2018, I served the attached Summons and Complaint for Defamation upon the above named defendant(s):

Missing In Minnesota, LLC

By handing a true and correct copy of the documents to him/her/it at:

Nathan Hanson

Registered Agent

Registered Address: 2440 Charles Street North, Ste 242, North St. Paul, MN 55109

I declare under penalty of perjury that everything that I have stated in this document is true and correct. Minn. Stat. 358.116.

Dated: June 14, 2018



Thomas Shimota

1069 So. Robert Street

West St. Paul, MN 55118

Telephone: (651) 222-4400

Clerk@MacDonaldLawFirm.com

County and State

Where Signed : Dakota

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

In Re the Matter of:

Court File No.: 62-CV-18-4145

Michelle L. MacDonald, MacDonald Law Firm, LLC,

Plaintiff,

v

AFFIDAVIT OF SERVICE

Michael Brodkorb individually and
doing business as www.MissinginMinnesota.com,
Missing in Minnesota, LLC and John and Mary Does,

Defendants.

I, Thomas Shimota, state that I am at least 18 years of age and that on June 14, 2018, I served the attached Summons and Complaint for Defamation upon the above named defendant(s):

Michael Brodkorb

By handing a true and correct copy of the documents to him/her at:

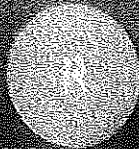
4136 Countryview Drive, Eagan, MN 55123

I declare under penalty of perjury that everything that I have stated in this document is true and correct. Minn. Stat. 358.116.

Dated: June 14, 2018


Thomas Shimota
1069 So. Robert Street
West St. Paul, MN 55118
Telephone: (651) 222-4400
Clerk@MacDonaldLawFirm.com

County and State
Where Signed : Dakota



Reporter Mike Br...
Mobile



You assisted the Dahlens in preparing their petition in juvenile court...but when I asked you at the hearing if you were helping the Dahlens, you said no...how do you reconcile the two positions?

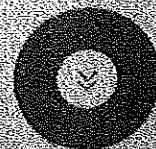
2/16/16 6:02 PM

Fwd: @mbrodkorb: RT
@chanenstrib: The DWI conviction of former state Supreme Court candidate Michelle MacDonald was upheld Tuesday by court of appeals.

I did not get convicted if a DUI. Please get the facts straight and retract this , material omissions will not be tolerated.

3/29/16 5:26 PM

I'm working on a post on judicial candidates in '16. You still plan on running for Supreme Court



Type a message...



FILE COPY

State of Minnesota
Ramsey County

District Court
Second Judicial District

Court File Number: **62-CV-18-4145**

Case Type: Personal Injury

**Notice of Case Filing and
Assignment**

MICHELLE LOWNEY MACDONALD
MACDONALD LAW FIRM L L C
1069 SOUTH ROBERT STREET
WEST SAINT PAUL MN 55118-1456

Michelle L. MacDonald, MacDonald Law Firm, LLC vs Michael Brodkorb, d/b/a Missing
in Minnesota, LLC, Missing In Minnesota, LLC

Date Case Filed: June 18, 2018

Court file number 62-CV-18-4145 has been assigned to this matter. All future correspondence must include this file number, the attorney identification number, and must otherwise conform to format requirements or they WILL BE RETURNED. Correspondence and communication on this matter should be directed to the following court address:

Ramsey County Court Administration
15 West Kellogg Boulevard Room 600
St Paul MN 55102

Assigned to: Judge David C Higgs

If ADR applies, a list of neutrals is available at www.mncourts.gov (go to Alternative Dispute Resolution) or at any court facility. Please direct all scheduling inquiries on this matter to Assignment at 65-266-8252.

Dated: June 20, 2018

Michael F. Upton
Court Administrator
Ramsey County District Court

cc: Michael Brodkorb
Missing In Minnesota, LLC



Mailing & Delivery
1069 So. Robert Street
W. St. Paul, MN 55118
Main: (651) 222-4400
Fax: (651) 222-1122
www.MacDonaldLawFirm.com

June 22, 2018

Dakota County Court
Attn: Court Administrator
1560 Highway 55
Hastings, Minnesota 55033

Re: In Re: Michelle L. MacDonald vs. Michael Brodtkorb
Dakota County Court File No: 19-HA-CV-18-2643

Dear Court Administrator:

The above case was e-filed, and accepted by Dakota County District Court, in error. Once the error was determined, a proposed order to correct the error was requested by June Baldwin, and the case was filed in Ramsey County as intended as follows:

In Re: Michelle L. MacDonald, MacDonald Law Firm, LLC vs. Michael Brodtkorb,
Missing In Minnesota, LLC.
Ramsey County Court File No.: 62-CV-18-4145

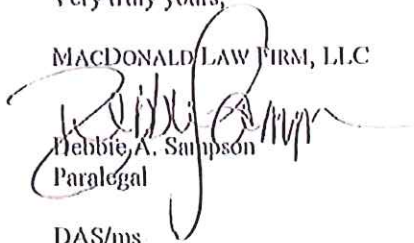
Judge David C. Higgs has been assigned in Ramsey. The Complaint, Confidential Source Document, and Affidavits of Personal Service are captioned in Ramsey County, where the defendant Missing In Minnesota, LLC is registered.

We are awaiting a determination by the Dakota County District Court to correct the error by signing the proposed order that was requested. Otherwise, the case filed in Dakota County can be promptly dismissed.

Thank you for your consideration in this matter.

Very truly yours,

MACDONALD LAW FIRM, LLC


Hebbie A. Sampson
Paralegal
DAS/ms



Nathan Hanson (via Odyssey e-serve)

Saint Paul & Suburbs ♦ 1069 So. Robert Street ♦ W. St. Paul, MN 55118
Minneapolis & Suburbs ♦ 3800 American Blvd. W. Suite 1500 ♦ Bloomington, MN 55431
Stillwater & Surroundings ♦ 6351 St. Croix Trail ♦ Stillwater, MN 55082

A.60

FILE COPY

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case type: Civil

Court File No. 62-CV-18-4145

Michelle L. MacDonald, MacDonald
Law Firm, LLC,

Plaintiffs,

vs.

Michael Brodkorb, individually and
doing business as
www.MissinginMinnesota.com,
Missing in Minnesota, LLC, and John
and Mary Does,

Defendants.

**DEFENDANTS' MOTION FOR RULE
11 SANCTIONS AGAINST
ATTORNEYS FOR PLAINTIFFS**

TO: PLAINTIFFS ABOVE-NAMED, and their attorneys, Michelle L.
MacDonald, 1069 South Robert Street, West St. Paul, Minnesota and Larry
A. Frost, 5123 W. 98th Street #111, Bloomington, Minnesota.

PLEASE TAKE NOTICE, that if the Summons and Complaint served and
filed in the above-captioned matter are not withdrawn within twenty-one (21) days
of the date of this motion, the Defendants, by and through their counsel, will
present to the Court this motion seeking relief pursuant to Minn. R. Civ. P. 11 as
follows:

- 1) An award of Attorneys' fees and costs associated with the defense of
this matter;
- 2) Dismissal of all pretended claims with prejudice;

- 3) Any such other relief of the Court deems appropriate, including but not limited to directives of a non-monetary nature or a fine payable to the Court, in addition to an award of attorneys' fees to the Plaintiffs.

This motion is based upon all of the proceedings, the file, the accompanying memorandum of law.

Dated: June 25, 2018

/e/ Nathan M. Hansen

Nathan M. Hansen
ATTORNEY FOR DEFENDANTS
Michael Brodkorb and
Missing in Minnesota, LLC
2440 North Charles Street, Ste 242
North St. Paul, MN 55109
651-704-9600
651-704-9604 (fax)
Attorney Reg. No. 0328017
nathan@hansenlawoffice.com

ACKNOWLEDGMENT

The undersigned hereby acknowledges that sanctions may be imposed under the circumstances set forth in Minn. Stat. § 549.211.

Dated: June 15, 2018

/e/ Nathan M. Hansen

Nathan M. Hansen #0328017

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case type: Civil

Court File No. 62-CV-18-4145

Michelle L. MacDonald, MacDonald
Law Firm, LLC,

Plaintiffs,

vs.

Michael Brodkorb, individually and
doing business as
www.MissinginMinnesota.com,
Missing in Minnesota, LLC, and John
and Mary Does,

Defendants.

DEFENDANTS' MOTION FOR RULE
11 SANCTIONS AGAINST KARLOWBA
ADAMS POWELL

TO: PLAINTIFFS ABOVE-NAMED, and Karlowba Adams Powell.

PLEASE TAKE NOTICE, that if the Amended Complaint served and filed
in the above-captioned matter are not withdrawn within twenty-one (21) days of
the date of this motion, the Defendants, by and through their counsel, will present
to the Court this motion seeking relief pursuant to Minn. R. Civ. P. 11 as follows:

- 1) An award of Attorneys' fees and costs associated with the defense of
this matter;
- 2) Dismissal of all pretended claims with prejudice;
- 3) Any such other relief of the Court deems appropriate, including but not
limited to directives of a non-monetary nature or a fine payable to the
Court, in addition to an award of attorneys' fees to the Plaintiffs.

This motion is based upon all of the proceedings, the file, the accompanying memorandum of law.

Dated: July 25, 2018

/e/ Nathan M. Hansen

Nathan M. Hansen
ATTORNEY FOR DEFENDANTS
Michael Brodkorb and
Missing in Minnesota, LLC
2440 North Charles Street, Ste 242
North St. Paul, MN 55109
651-704-9600
651-704-9604 (fax)
Attorney Reg. No. 0328017
nathan@hansenlawoffice.com

ACKNOWLEDGMENT

The undersigned hereby acknowledges that sanctions may be imposed under the circumstances set forth in Minn. Stat. § 549.211.

Dated: July 25, 2018

/e/ Nathan M. Hansen

Nathan M. Hansen #0328017

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

<p>Michelle L. MacDonald, MacDonald Law Firm, LLC,</p> <p>Plaintiff,</p> <p>vs.</p> <p>Michael Brodkorb individually and doing business as www.MissingMinnesota.com, Missing in Minnesota, LLC and John and Mary Does,</p> <p>Defendants.</p>	<p>Case Type: Civil Other/Misc. Court File No.: Assigned Judge:</p> <p>NOTICE OF MOTION AND MOTION FOR DEFAULT JUDGMENT</p>
---	---

TO: MICHAEL BRODKORB, doing business as www.MissingMinnesota.com, Missing in Minnesota, LLC and John and Mary Does, and their attorney Nathan Hansen, Attorney at Law, 2440 Charles Street North, North St. Paul, MN 55109.

NOTICE OF MOTION

PLEASE TAKE NOTICE, that Plaintiffs, Michelle L. MacDonald and MacDonald Law Firm, LLC ("Plaintiffs") will bring the following Motion before the Honorable Richard H. Kyle, Jr. at the Ramsey County District Courthouse, 15 W. Kellogg Blvd., St. Paul, Minnesota 55101, at 9:00a.m. on November 1, 2018 for an Order granting Plaintiffs the following:

MOTION

Plaintiffs move the Court for an Order for Default Judgment in favor of Plaintiffs against Defendant Michael Brodkorb, et. al on the basis that Defendants have failed to Answer Plaintiffs' Complaints for defamation, defamation per se and defamation by implication served on June 14, 2018 and July 24, 2018 and request for damages, prejudgment interest and reasonable attorney fees, including reasonable costs, disbursements and any other amounts the Court deems just and equitable upon proof of the same by affidavit.

Plaintiff further requests an Order directing Defendants to take whatever action is necessary to have the current statements and objectionable images, ongoing, removed from the website, social media, and replacing it with a statement that deletes the defamatory language and images including Findings that:

DEFAMATION AND DEFAMATION PER SE

- a. Defendants Brodkorb have knowingly, intentionally and maliciously made false and defamatory written and verbal statements concerning Ms. MacDonald, the natural tendency of which is to hold her up to hatred, scorn, contempt, ridicule and disgrace in the minds of right-thinking persons, and to deprive her of their friendly society.
- b. Defendants' publication of knowingly, intentionally and maliciously false and defamatory statements has negatively affected and will continue to negatively affect Ms. MacDonald in connection with her professions, including but not limited to her current service as an officer of the court, an attorney for MacDonald Law Firm, LLC, and her candidacy for election to the Minnesota Supreme Court.

DEFAMATION BY IMPLICATION

- a. Defendants' website, taken as a whole, including the false images, creates a false implication concerning Ms. MacDonald's career as a lawyer, as involved in ongoing criminal activity, ongoing criminal investigation by police, a felon, a drunk, mentally ill, and false implications about her honesty and job performance and the circumstances surrounding the representation of her clients, and her employment as an attorney.
- b. The website statements and false representations in the images imply that in Ms. MacDonald's employment as an attorney, she committed criminal acts and continues to commit criminal acts while representing her clients and is under criminal

investigation, which is not true. The statements imply that Ms. MacDonald's employment as counsel and as an officer of the court involved and continues to involve criminal activity and criminal investigation.

- c. Defendants published their false statements or false implications about Ms. MacDonald by publishing the statements on the website, and social media, with full knowledge that it would be made to the general public and made it available to the general public. Defendant's false statements or false implications has been republished by Defendants and others and numerous social media sites, through twitter and Facebook and others, and remains prominently displayed on the website, including the false image being on google.
- d. Defendants' false statements or false implications about Ms. MacDonald relate specifically to Ms. MacDonald's profession, trade , or business, and thus constitutes "defamation per se." Under defamation per se, damages are presumed.

NOTICE

You are informed that this motion is based upon Rule 55 of the Minnesota Rule of Civil Procedure, Rule 117 of the General Rules of Practice, the pleadings on file, and the affidavits and documents that will be filed pursuant to the General Rules of Practice.

You are further informed that said motion will be made to the Court based upon the Plaintiff's Complaint, Amended Complaint, affidavits, arguments of counsel, and all pleadings, records and files herein, and will be addressed to the sound discretion of the court.

All responsive pleadings shall be served and mailed to or filed with the court administrator no later than five days prior to the scheduled hearing. The court may, in its discretion, disregard any responsive pleadings served or filed with the court administrator less than five days prior to such hearing in ruling on the motion or matter in question.

M.S. 549.21 Acknowledgment

The undersigned hereby acknowledges that costs, disbursements, and reasonable attorney and witness fees may be awarded pursuant to Minn. Stat. §549.21, subd. 2, to the party against whom the allegations in this pleading are asserted, if this party or his or her attorney acted in bad faith; asserted a claim or defense that is frivolous and that is costly to the party; asserted an unfounded position solely to delay the ordinary course of the proceedings or harass; or committed a fraud upon the Court.

Dated: September 18, 2018

POWELL LAW OFFICE

/s/ Karlowba R. Adams Powell
Karlowba R. Adams Powell, Esq. (#0327335)
POWELL LAW OFFICE
835 Geranium Ave. E.
St. Paul, MN 55106
(651) 414-1616
ATTORNEY FOR PLAINTIFFS

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case type: Civil

Court File No. 62-CV-18-4145Michelle L. MacDonald, MacDonald
Law Firm, LLC,

Plaintiffs,

vs.

Michael Brodkorb, individually and
doing business as
www.MissinginMinnesota.com,
Missing in Minnesota, LLC, and John
and Mary Does,

Defendants.

**NOTICE OF MOTION AND MOTION
TO DISMISS PURSUANT TO MINN.R.
CIV. P. 12 AND/OR FOR SUMMARY
JUDGMENT PURSUANT TO MINN. R.
CIV. P. 56**

TO: Michelle L. MacDonald and her attorney Karlowba Adams Powell.

PLEASE TAKE NOTICE that on November 1, 2018 at 9:00 a.m. at the Ramsey
County Courthouse, 15 West Kellogg, St. Paul, MN 55102 there will be a hearing on this
motion seeking the following relief:

- 1) Dismissal of all pretended claims with prejudice;
- 2) Any such other relief of the Court deems appropriate.

This motion is brought pursuant to Minn. R. Civ. P. 12 and/or Minn. R. Civ. P. 56.

Supporting documents will be timely filed prior to the hearing.

Respectfully submitted,

Dated: September 19, 2018

/s/ Nathan M. Hansen

Nathan M. Hansen
ATTORNEY FOR DEFENDANTS
Michael Brodkorb and
Missing in Minnesota, LLC
2440 North Charles Street, Ste 242
North St. Paul, MN 55109
651-704-9600
651-704-9604 (fax)
Attorney Reg. No. 0328017
nathan@hansenlawoffice.com

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

In Re the Matter of:

Court File No: 62-CV-18-4145

Michelle L. MacDonald,
MacDonald Law Firm, LLC,

Plaintiff,

v.

**AFFIDAVIT OF
MICHAEL BRODKORB**

Michael Brodkorb individually and
doing business as
www.MissinginMinnesota.com,
Missing in Minnesota, LLC and
Jon and Mary Does,

Defendants.

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

MICHAEL BRODKORB, being first duly sworn upon oath, states and alleges as follows.

1. I am a defendant in the above-captioned proceeding, and I make this affidavit in support of my Motion for Summary Judgment Dismissing the Amended Complaint for Defamation..

2. The Amended Complaint implies (par. 39) that Plaintiff was suspended from the practice of law in January of 2018 based solely upon a retaliatory complaint. In imposing

her 60-day suspension with 2 years probation, the Minnesota Supreme Court had a different view, finding that she had dishonestly and recklessly made false statements about a judge; overstepped the bounds of proper professional behavior by repeatedly disrupting court proceedings; pursued frivolous claims and court proceedings; and failed to competently represent clients. A copy of the Supreme Court's decision is annexed hereto as Exhibit "A", and incorporated herein by reference as if fully set forth hereat.

3. Plaintiff alleges (Amended Complaint, ¶¶41-55) that she provided me with various facts and documents designed to show her in a favorable light. Most of what she reports is contradicted by court decisions and the observations of others.

Person of Interest

4. The Amended Complaint (¶¶56-57) alleges that on October 22, 2015, I falsely reported to several persons that Plaintiff was a "person of interest" in a case involving the disappearance of two missing girls. The statements, which I did make, referred to the 2013 disappearance of the daughters of Plaintiff's client, Sandra Grazzini-Rucki. Plaintiff had been noted as a "person of interest" in an April 2015, article by Brandon Stahl, published in the Star Tribune. The phrase was repeated in subsequent Star Tribune articles by Stahl and by Karen Zamora (July 29, 2016).

5. Beginning on January 8, 2013, Plaintiff represented Sandra Grazzini-Rucki in a Dakota County child custody case. Three prior attorneys had withdrawn from representing

her. On April 19, 2013, Ms. Grazzini-Rucki defied the Court's custody orders and secreted two daughters for 944 days.

6. Subsequently, Grazzini-Rucki and three of her co-conspirators (Dede Evavold, Gina Dahlen and Douglas Dahlen) have been convicted of multiple counts of felony deprivation of parental rights.

7. Lakeville Police investigators had confirmed to me, on multiple occasions, that plaintiff was a "person of interest" in the investigation, based on their belief that she was involved and that she knew what was going on.

8. In ¶61 of the Amended Complaint, Plaintiff alleges that, on or about August 3, 2016, I made the "false statement" that she was a "person of interest" on the website, www.MissinginMinnesota.com, stating that I - not the police - had so labeled her, and that she threatened to sue me if I did not cease and desist. In fact, the article accurately states, "MacDonald was labeled as a "person of interest" by the Lakeville Police Department in the disappearance of Samantha and Gianna Rucki." A copy of the August 3 article is annexed hereto as Exhibit "B" and incorporated herein by reference as if fully set forth hereat.

9. At all relevant times, I reasonably believed that Plaintiff was a person of interest in the disappearance of the children, and the Lakeville police so labeled her. In fact, she was a person of interest.

Publication of the Booking Photo

10. Plaintiff's Amended Complaint alleges (¶79) that I posted a photograph of her in order to "maliciously portray [her] as a drunk, criminal and mentally ill," that the image had not been published prior to appearing in a tweet by me on January 5, 2017, that I falsely identified the photo as a mug shot.

11. The photograph in question is a photograph of Plaintiff. It is a booking photo, a public record obtained by me, and available to the public at large, from Dakota County Sheriff's Department, maintained on the county jail's booking photo database.

12. I posted this photo in connection with articles where it was relevant to the story. Attached hereto as Exhibit "C" and incorporated herein by reference are print-outs of stories from the website that include her booking photo.

Drunk Driving

13. The Amended Complaint asserts at various places, that I have falsely depicted her as "a drunk" [see, e.g. ¶¶ 79, 88, 89] and that I stated in a tweet that she had been convicted of driving under the influence.

12. Plaintiff admits that she was involved in a traffic stop on August 5, 2013. She claims that a blood test taken at some time that day showed zero alcohol in her system, and that she was "acquitted in September of 2014 of drunk driving." [Amended Complaint, ¶42].

13. I did not ever state that she was convicted of DUI. On May 18, 2016, an article appeared on missinginminnesota.com, "Michelle MacDonald recommended for GOP endorsement for MN Supreme Court - again." The article included these statements:

After MacDonald was endorsed [in 2014], news broke that she was facing criminal charges for suspicion of drunk driving and resisting arrest.

* * *

In September 2014, MacDonald was found not guilty of drunk driving, but was found guilty of refusing to submit to breath testing, obstructing the legal process and speeding.


A copy of the article is annexed hereto as Exhibit "D " and incorporated herein by reference as if fully set forth hereat.

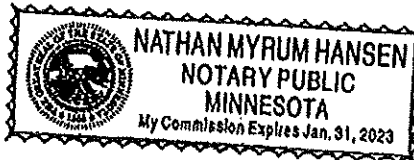
WHEREFORE, your affiant respectfully requests the order of this court granting his motion for summary judgment dismissing Plaintiff's Amended Complaint for Defamation in its entirety.



Michael Brodkorb

Submitted and sworn to before me this 1st day of October, 2018


Notary Public



STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Michelle L. MacDonald,
MacDonald Law Firm, LLC;

Plaintiffs,

vs.

Michael Brodkorb, individually
And doing business as
www.MissinginMinnesota.com
Missing in Minnesota, LLC
And John and Mary Does,

Defendants.

NOTICE OF APPEAL TO
COURT OF APPEALS

TRIAL COURT FILE NO.
62-CV-18-4145

DATES OF ORDERS:
March 1, 2019

TO: CLERK OF THE APPELLATE COURTS, 305 MINNESOTA JUDICIAL
CENTER, 25 REV. DR. MARTIN LUTHER KING JR. BLVD., ST. PAUL,
MINNESOTA 55155.

PLEASE TAKE NOTICE that the above-named Plaintiffs appeal to the Court of Appeals
of the State of Minnesota from the attached Order filed on the dates shown above: *Order dated
March 1, 2019.*

Karlowba R. Adams Powell, #0327335
835 Geranium Ave. East
St. Paul, MN 55106
(651) 414-1616
adampowelllaw@gmail.com
ATTORNEY FOR APPELLANTS

Nathan M. Hansen, #328017
2440 Charles Street, North, Ste. 242
North St. Paul, MN 55109
(651) 704-9604
nathan@hansenlawoffice.com
ATTORNEY FOR DEFENDANTS

Dated: April 30, 2019

/s/ Karlowba R. Adams Powell
Karlowba R. Adams Powell, Esq.